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CONTESTED-ELECTION CASE OF HORGAN v. TINKHAM

HEARINGS

BEFORE THE

COMMITTEE ON ELECTIONS No. 2

H. B. 2007 HOUSE OF REPRESENTATIVES

SIXTY-FOURTH CONGRESS

FIRST SESSION

ON

THE CONTESTED-ELECTION CASE OF FRANCIS J. HORGAN
v. GEORGE HOLDEN TINKHAM, FROM THE ELEVENTH
CONGRESSIONAL DISTRICT OF MASSACHUSETTS

MAY 3 AND 4, 1916



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CONTESTED-ELECTION CASE OF HORGAN V. TINKHAM.

COMMITTEE ON ELECTIONS No. 2.

HOUSE OF REPRESENTATIVES.

Wednesday, May 3, 1916.

The committee met at 10 o'clock a. m., Hon. James A. Hamill (chairman) presiding.

The CHAIRMAN. Are counsel ready to proceed in this case?

Mr. INNES. We are both ready, Mr. Chairman.

The CHAIRMAN. The meeting has been called this morning for the purpose of hearing argument in the case of Francis J. Horgan, contestant, against George Holden Tinkham, contestee. The contest is from the eleventh congressional district of Massachusetts. Who appears for the contestant?

Mr. PROUT. William C. Prout.

The CHAIRMAN. Mr. William C. Prout appears for the contestant. Who appears for the contestee?

Mr. INNES. Charles H. Innes.

The CHAIRMAN. Gentlemen, have you any idea as to how much time you desire to argue this case?

Mr. PROUT. What is the custom? Is it customary to allow the contestant any time for rebuttal?

The CHAIRMAN. Yes; the contestant will have the right to open and to reply.

Mr. PROUT. I would not want to limit myself to anything less than one hour on the first argument.

The CHAIRMAN. On your opening argument?

Mr. PROUT. Yes.

The CHAIRMAN. How much time will you want, Mr. Innes?

Mr. INNES. I do not know. It will depend somewhat upon what Brother Prout has to say. I did not intend to cover anything he covers.

The CHAIRMAN. If in the course of the argument anyone wants further time, it is always given by the committee. We are very liberal about that. The only point is, we want to get some kind of a tentative idea as to about how long you think you will be. You think you will be about one hour in your opening statement, and you think you will want about one hour, Mr. Innes?

Mr. INNES. About one hour, Mr. Chairman; yes.

The CHAIRMAN. And how long will you want in reply?

Mr. PROUT. I do not imagine over 15 or 20 minutes.

The CHAIRMAN. Half an hour?

Mr. PROUT. Half an hour at the outside, I should say.

The CHAIRMAN. That can be changed later, if the committee so desires.

Mr. ROGERS. May I ask if it is your intention, Mr. Chairman, to push this matter to a conclusion to-day?

The CHAIRMAN. If possible; if it is not possible, we will meet to-morrow. The House meets to-day at 12 o'clock, and therefore we will have two hours. Mr. Prout, you may begin.

STATEMENT OF MR. WILLIAM C. PROUT, ATTORNEY FOR MR. FRANCIS J. HORGAN, CONTESTANT.

Mr. PROUT. Mr. Chairman and gentlemen of the committee, this is a contested-election case from the eleventh Massachusetts district. Briefly, for the information of the committee, the district is composed wholly of wards within the city of Boston, including ward 10, the whole of ward 11 with the exception of two precincts, and wards 12, 18, 19, 21, 22, and 23.

The CHAIRMAN. Will you please repeat the numbers of those wards?

Mr. PROUT. Ward 10; the whole of ward 11 with the exception of two precincts, there being nine precincts in the ward; wards 12, 18, 19, 21, 22, and 23.

Mr. RUSSELL. Who represented this district in the last Congress?

Mr. PROUT. Andrew J. Peters, and the district has been represented by Democrats since its formation 10 or 12 years ago. The make-up of the district and the political complexion of the district I will touch on a little later.

In order to get down as rapidly as possible to the meat of the case, I would like to say that the contest is based on several grounds, including bribery, the use of liquor, deception of voters by postal cards sent out from one end of the district to the other linking the name of the Democratic candidate for governor and the Republican candidate, the contestee, for Congress, and a conspiracy between the Democratic leader in the district and the contestee, the Democratic leader being a member of the Senate and chairman of the Democratic city committee of Boston; and also an allegation that the contestee's returns, as filed with the secretary of state in Massachusetts, were not in accordance with the Massachusetts corrupt-practices act.

On the question of bribery, the bribery consists in the payment of certain small sums of money to individual voters in the district, including the payment of money to one Dolan, as testified to on page 307 of the record; one Purcell, as testified to on pages 112 and 235 of the record; that amount of money being—

The CHAIRMAN (interposing). Mr. Prout, is that set out in your brief, just for my information?

Mr. PROUT. Yes; the references are made in the brief and the different subheads are set out and you can find in the index of the brief an outline of the brief.

In the case of Purcell the bribery alleged consists of allowing Purcell, who was a Democratic voter, to retain for his own use the unexpended balance which was given to him by the contestee for the purpose of sending out these postal cards referred to as the "Walsh-Tinkham postal card." Walsh being the Democratic governor and a candidate for reelection and Mr. Tinkham being the Republican nominee for Congress; also money paid to one Sheppard, referred to on page 493

of the record, Mr. Sheppard being a negro voter who was paid \$27.85 under the heading of posters.

Mr. RAMSEYER. Under the heading of what?

Mr. PROUT. Posters; also the payment of \$58.75 to one Mason, another negro voter, who was paid that money for the purpose of having a rally, but there was no itemized account as to his expenditures and no evidence as to how the money was expended.

Mr. TILLMAN. What is the reference to Mason?

Mr. PROUT. Page 492. There is also considerable evidence of bribery which is not of specific sums and not on the admission of the individuals to whom it was paid, but rather in the nature of general testimony, which is valuable more because of the cumulative effect of it than because of the value of any isolated instance. This testimony includes, among other things, the testimony of one Devlin, on page 127, who saw Senator Timilty paying out money to voters, and Senator Timilty, we claim, in so doing was acting as the agent of the contestee. Also the evidence of one Lally, on pages 290-296 and 305, containing various instances of the payment of money to the voters and the use of liquors. Also the testimony of one White, on page 309, who testified as to the payment of \$10 to one Killilea. Also the testimony of one Brosnahan, on page 285, who testified to the payment of \$50 to the secretary of an organization known as the Kearsarge Club. Also the testimony of one Keyes, on page 339, who testified as to the payment of \$4.25 to him and the giving to him of 10 or 12 small vials of whisky for distribution among the voters. That also comes under the heading of the use of liquor as well as the distribution of money.

There was also the testimony of one Frederick J. McLaughlin, on page 250 of the record, a man who is the circulation manager of the largest women's publication, probably, in the United States, and a man of standing in the community, whose testimony was disposed of with a wave of the hand by the contestee, but who testified that one Duffin, a law partner of the contestee and a man very closely associated with him, who testified that he was in a position to know the facts in connection with the contestee's political campaign, and McLaughlin testified that Duffin stated to him, as appears in the record, that the contestee had barrels of money and they, meaning the contestee and his agents and servants, spent it on the election like drunken sailors; and furthermore that they had put the thing across, to use his own words, but they felt that the contestant could not prove it. That evidence being the admission of one so closely connected with the contestee in his law practice and in the political campaign is certainly entitled to great weight and certainly is demonstrative of the excessive use of money and the bribery and corruption of the voters. In addition to these instances, there are several instances of the distribution of money under the guise of purchasing tickets for dances and balls of organizations, some of which probably existed and some of which probably had no existence whatsoever. That is referred to in the testimony of one of the contestee's witnesses—I beg your pardon, one of the contestant's witnesses—who was a supporter of the contestee, on page 301, 302, and 303 of the record, and in the testimony of contestant on pages 358, 359, 360, and 363. Now, with regard to the question of the use of liquor, which is also of some importance, that

is referred to in the testimony of one Crimmins on page 202, who testified that liquor was dispensed freely in private houses in ward 18, that being the ward dominated by Senator Timilty, and in the testimony of Keyes on page 338, already referred to, in the distribution of vials of whisky, and the testimony of William J. Kelley, pages 209, 210, 211, and 212, who testified as to the distribution of liquor in various barrooms, the owners of which were friendly to contestee, and supporters of his. The testimony of one Lally, on pages 290 and 296, who testified as to the purchase of liquor by Craven, another of contestee's supporters, in a hotel on election day.

Now, the matter of the use of liquor by contestee is disposed of by him in his brief in rebuttal by the statement that in Massachusetts on election day the barrooms have to close; consequently there could not be any distribution of liquor on election day. Our reply to that is that, although the common, ordinary barrooms have to close, the extraordinary kitchen barrooms, of course, are always open on Sundays, holidays, and any other time, and also any liquor place which happens to have a hotel license—and there is a great many of them in the district—are allowed to remain open and do business just as on any ordinary day of the week; and on the testimony of the witnesses referred to we claim that there was a widespread, illegal distribution of liquor by the contestee and his agents and supporters.

Now, the next matter which I desire to refer to is the deception of voters of one ward—ward 22—by the printing and distribution of the post card referred to as the Walsh-Tinkham post card.

The CHAIRMAN. Pardon me a minute, Mr. Prout. Is this a copy of that post card?

Mr. INNES. Yes.

Mr. PROUT. Yes; that is one of the post cards which was sent out.

The CHAIRMAN. It is agreed that this post card [Exhibit No. 1] is the card known as the Walsh-Tinkham post card.

Mr. RUSSELL. Does the record show, or is there any way to know, how many of these postal cards were mailed out?

Mr. PROUT. Yes; the record will show that in the testimony of Purcell.

Mr. INNES. The printer's bill, I think, shows how much he paid for them.

Mr. RUSSELL. If the record shows that—

Mr. PROUT (interposing). The record, on page 112, in the testimony of Purcell, will show there were approximately 2,000 of these cards sent out in one ward, that being ward 22. Now, the contestee and the men who signed the post card admit that both signers of the post card are registered, enrolled Democrats; that both are employed by the New York, New Haven & Hartford Railroad, and they got up a card containing the names of the Democratic candidates for the house—that is, the Massachusetts house—and contestee's name, and presented that card to the contestee, and after the conference with him it was changed so as to include the name of the Democratic candidate for governor and his own name; that he paid these men \$40 to cover the cost of getting this out; that they had it printed and distributed it in ward 22.

Mr. RUSSELL. Did I understand you to say that the contestee admits that he paid for printing the card?

Mr. PROUT. Yes.

Mr. RUSSELL. And it was done with his knowledge and consent?

Mr. PROUT. He paid for it and a change was made in the form of it after conference with him.

Mr. MAGEE. I notice the card is signed by two gentlemen. Is it your contention that the signatures were put on the card without authority?

Mr. PROUT. No, sir; they both testified and the contestee testified that they put their signatures on themselves.

Mr. TILLMAN. You say they are known Democrats?

Mr. PROUT. They are enrolled Democrats, or were at that time. In Massachusetts we have a system of party enrollment and the voters who desire to take part in a party caucus are obliged to enroll themselves as members of one party or the other.

The CHAIRMAN. Now, Mr. Prout, what point do you make about this postal card?

Mr. PROUT. What point?

The CHAIRMAN. Yes; what is your point; that it was illegal to send this out?

Mr. PROUT. We do not make any claim of illegality as far as conformity with the ordinances of the city of Boston or the State of Massachusetts is concerned, but we do say that it is an unfair attempt to mislead the voters of the district and that, as a matter of fact, it did deceive and mislead a certain number of them, and that it comes under the ruling laid down in the case of *Bradley v. Slemmons*.

Mr. RUSSELL. May I ask whether the contestee and his organization were supporting Walsh?

Mr. PROUT. Pardon me just one moment—that reference is 2 Hinds, 938. The contestee and his organization were not supporting Walsh, but the idea of sending this card out was to confuse the voters and give them the idea that Gov. Walsh, a popular Democratic governor, who was then governor and candidate for reelection, was running on the same ticket or in some way was identified with the Republican candidate for Congress. They were not supporting each other and had no connection. The contestee does not claim that he supported Walsh or that Walsh supported him.

Mr. RAMSEYER. How long before the election were these cards mailed out?

Mr. PROUT. The election was on Tuesday, and I believe the cards were mailed on the Saturday before.

Mr. TILLMAN. Are these Democrats well known and popular people or are they obscure men, and would their names on a card of this kind attract the attention of Democrats all over the city and cause them to get the impression that they were speaking for those two names on the ticket, or are they obscure Democrats and not well known to the electorate?

Mr. PROUT. Both of them are fairly well known, and one is a son-in-law of a former chairman of the Democratic ward committee.

The CHAIRMAN. Mr. Prout, is there anything to show that Purcell or Reynolds objected to the use of their names, or did they allow the use of their names?

Mr. PROUT. They allowed the use of their names. They both testified on the stand that they were not acquainted with Mr. Tinkham until shortly before the primaries; that he had never done anything for them, and they did not know Mr. Horgan and knew

neither good nor evil about either one of the candidates, and therefore they had absolutely no motive for sending out these cards, and we question their motive in sending them out.

Mr. ROGERS. It was testified, was it not, that Mr. Tinkham paid for these cards?

Mr. PROUT. Yes.

Mr. ROGERS. Do you recall whether the item was entered in Mr. Tinkham's campaign return?

Mr. PROUT. That I can not say, but I presume it was; yes.

Mr. INNES. It was. Incidentally, I might say here, if you are going into this question, Mr. Prout, I know you want to have it correct, Mr. Purcell did testify that the barber who shaved Mr. Tinkham at the athletic club was a friend of his and that was the reason he gave for interesting himself.

Mr. PROUT. Yes; that is correct. The only reason that Mr. Purcell could give for taking an interest in this matter, although an enrolled Democrat, in behalf of a Republican nominee, was that the barber who had shaved Mr. Tinkham or habitually shaved Mr. Tinkham at the athletic club, asked him to interest himself in Mr. Tinkham's behalf; and he did and persuaded Reynolds to do the same, although Reynolds was the son of a former chairman of the Democratic ward committee, and I believe Purcell was a son-in-law of another former chairman of the Democratic ward committee.

The law which I refer to as tending to show that this was an unfair, if not a positively illegal way to conduct a campaign, is set out in the case of *Bradley v. Slemons*—

Mr. MAGEE (interposing). Is it your contention that there is any statute in the State of Massachusetts under which the sending out of this card might be held to be an illegal act?

Mr. PROUT. No; I say, as far as the statute of Massachusetts in connection with sending out political literature is concerned, there was no violation of that statute. The statute simply requires that the card be signed by one person and have his address on the card; but in the case of *Bradley v. Slemons*, which was decided by the Committee on Elections of the House, in which case a similar act was committed, the committee not only thought that it was a thing which should not have been done, but in their report said:

We now come to the consideration of the most important point made by the contestant in his brief and arguments—the circulation of false and fraudulent posters in Chicot County a few days before the election.

That was a case in which posters were placarded throughout the district several days at least before the election, so that the other candidate had an opportunity to see them and correct any damage they did, while in this case it was a matter of sending out postal cards on Saturday evening, they being received by the voters on Monday morning, the very day before the election, which allowed the other candidate absolutely no opportunity to make any explanation or to refer to them in any way.

The committee in that case went on to say:

The object was evidently to deceive the Republican Party in that county and thus induce that vote to be cast for Slemons and a vote which was supposed otherwise would have been cast for contestant. It was a shallow device, dishonorable to those engaged in the transaction, and deserves the emphatic condemnation of every friend of free and fair elections, and if the testimony

was sufficient to establish the complicity of contestee with an act so dishonorable, and when satisfied that its effect upon the voters produced a result different from that which otherwise would have occurred, we would not hesitate to recommend that the election be set aside and a new one ordered.

Now, we do not contend that there was any express statute, either of the State of Massachusetts or of the United States, which was violated, but we contend that it was absolutely unfair, and, as the committee in this case said, if it deceived a sufficient number of voters into voting a way in which they would not otherwise have voted, and we contend that the vote in ward 22 does show that was the case, we ask your committee to follow the rule laid down in the case of *Bradley v. Slemons* and decide the case, so far as the vote of that ward is concerned, for the contestant.

Mr. RAMSEYER. Is that a rule laid down by the courts of Massachusetts?

Mr. PROUT. That is a decision by a committee on contested elections.

Mr. RAMSEYER. Of what?

Mr. PROUT. Of the United States Congress.

Mr. INNES. We have referred to that case on page 98. That was before the Australian ballot law—

Mr. PROUT. I can not yield for any argument, Mr. Innes. If I make any misstatements, I would be glad to have you call my attention to them, but I can not yield now for an argument.

The CHAIRMAN. In your brief you refer to the one-way circular. Is that what you are referring to?

Mr. PROUT. No sir; the one-way circular is another circular that I will refer to later. The Massachusetts corrupt-practices act was not passed until 1914, as it was amended, and there have been no decisions under the Massachusetts act on any of the matters referred to there.

Mr. RAMSEYER. I understand that your reference is to *Hinds' Precedents*.

Mr. PROUT. Yes, sir.

Mr. RUSSELL. Was there any positive proof as to the effect of those postal cards? I believe you said it was done in one ward and that it did have an effect.

Mr. PROUT. They were sent to but one ward; they were only sent to ward 22. Two thousand of them were sent to Democratic voters, and they were sent only to Democratic voters.

Mr. RUSSELL. How do you establish the fact that the postal cards had any effect on the election?

Mr. PROUT. The only way we have to try to establish that is to point to the fact that they were sent out on the last day prior to the election, and to the fact that the vote in that ward shows that there was an influence which did not affect the voters, and there is also the testimony of the contestant, in which he refers to specific cases.

Mr. RUSSELL. How many votes did the contestant run behind the Democratic ticket in that ward?

Mr. PROUT. The contestant ran about 500 votes behind the Democratic ticket in that ward—that is, behind the lowest man on the Democratic ticket.

Mr. RUSSELL. Did the contestee run ahead of the Republican ticket?

Mr. PROUT. The contestee ran ahead, not only of the Republican ticket but ahead of the Republican nominee for governor, Hon. Samuel W. McCall, whom he says was one of the ablest and most widely known Republicans in the State of Massachusetts.

Mr. MAGEE. How far did he run behind Gov. McCall?

Mr. PROUT. Gov. McCall got 1,412 votes and Mr. Tinkham got 1,972. That was in ward 22, in which those post cards were sent out. Mr. Tinkham got 560 votes more than the Republican candidate for governor, whom he says in this brief is one of the ablest and best-known public men in Massachusetts.

Mr. MAGEE. What ward does Mr. Tinkham live in?

Mr. PROUT. He lives in ward 11. The vote as between the Democratic candidate for governor and the contestant in that ward, ward 22, was, for Gov. Walsh, 2,562 votes, and for contestant, 1,951 votes, showing a difference of almost 600 votes in either case—that is to say, the contestant ran about 600 votes behind the Democratic candidate for governor, while the contestee ran about the same number of votes ahead of the Republican nominee for governor. Now, we come to the alleged conspiracy.

Mr. ROGERS. I think it is quite an interesting consideration as to whether the running ahead of his party by one man as compared to the rest of his own ticket and the running behind of a man as compared with the rest of his ticket is evidence of something unlawful or illegal. Have you any authority quoted in your brief on that point?

Mr. PROUT. Yes, sir. Before coming to the law, however, I would like to call your attention to the fact that that same disparity is shown in every case. It is not confined to the comparison between them and the candidates for governor; the comparison applies not only to the candidates for governor, but to all the other candidates; it applies to the candidates for the house; to the candidates for the senate; and to the candidates for lieutenant governor.

Mr. ROGERS. Did Mr. Tinkham run well ahead of his ticket?

Mr. PROUT. Mr. Tinkham ran ahead of every candidate on his ticket.

Mr. ROGERS. And Mr. Horgan ran behind every candidate on his ticket?

Mr. PROUT. Yes, sir.

Mr. MAGEE. In how many other wards?

Mr. PROUT. Mr. Tinkham ran ahead of his ticket in other wards, but not as far ahead in any other ward as in this particular ward. Later on I will give the percentages showing how he ran. Now, in reply to Mr. Rogers's request as to whether we have any legal authorities on the question of the weight of such comparisons, I would call the attention of the committee to the case of *Small v. Tillman* (2 Hinds' Precedents, par. 968), in which it was held that it was established beyond question that a comparison of the votes may be taken as legal evidence of fraud, corruption, intimidation, or bribery. In that case it was held that the returns of a former election were proper evidence to corroborate proof of intimidation and fraud. In this case we are relying not only upon the returns of a year or two years before, but in addition to that we are also relying upon a comparison of the returns for the very year in which this election was held. The law on that point is also upheld in the

case of *Smith v. Shelley* (2 Hinds' Precedents, par. 965), wherein the votes of previous elections and the nature of the population were cited to establish a presumption as to the political preference of the district.

MR. RAMSEYER. You do not claim that that alone is evidence of fraud, do you?

MR. PROUT. No, sir; we consider that a suspicious circumstance, taken together with the other elements. As was stated in the case of *Sullivan v. Felton* (2 Hinds' Precedents, par. 1016), "Where the vote returned showed a change as compared with the vote of the preceding election, a majority of the committee consider suspicious." While we are on that point I might say, in connection with the charge of conspiracy, that the very nature of the charge is such that you can not get direct, specific proof of the fraud and bribery, or of the actual passing of the money, or of the actual conspiracy; the nature of the act is such that the members who are most interested are animated by the same object, namely, to keep it quiet. In most instances they are the only ones who are parties to the fraud, and is a well settled principle of law, as laid down in the case of *Mitchell v. Walsh* (2 Hinds' Precedents, par. 263)——

MR. RAMSEYER (interposing). Had Mr. Tinkham held office before?

MR. PROUT. Mr. Tinkham had held office as an alderman of the city of Boston, and he was also in the State senate from his own ward—ward 11. He was a member of the city council, which was at that time composed of 75 members, representing his own ward; and he also represented his own ward and ward 10, both of which are in this congressional district, in the Massachusetts State Senate.

MR. RAMSEYER. Are the wards he represented in council and those he represented in the State senate Democratic?

MR. PROUT. No, sir; both of them are Republican wards. They are the strongest Republican wards in Boston.

MR. RAMSEYER. But the congressional district is Democratic?

MR. PROUT. We contend that the congressional district is Democratic. It has always been Democratic, with this single exception, and it is Democratic now——

MR. RAMSEYER (interposing). What majority do you claim for Mr. Horgan?

MR. PROUT. Two years ago Congressman Peters defeated his Republican opponent by a vote of 17,000 to 9,000.

MR. RUSSELL. Was that a plurality? That was not the majority, was it? Was there a Progressive ticket in the field?

MR. PROUT. No, sir; there was no Progressive ticket. That was a contest between the Republican candidate and Democratic candidate.

MR. RUSSELL. It was that much majority and not plurality?

MR. PROUT. That was the majority.

MR. RAMSEYER. Has it been running that way all along?

MR. PROUT. It has always been Democratic.

MR. RAMSEYER. By that majority?

MR. PROUT. No, sir; that vote of 17,000 to 9,000 was exceptional.

MR. MAGEE. What do you call the normal majority?

MR. PROUT. The normal Democratic plurality, as shown by the average Democratic vote for everything, is something like 2,800

votes. Taking the vote for candidates generally it would show a Democratic plurality of something like 2,800 votes.

Mr. MAGEE. What was Mr. Tinkham's plurality?

Mr. PROUT. Mr. Tinkham's plurality was 1,647 votes. In reply to the question as to his representation in other offices, in 1909 he received 1,922 votes in ward 10 for the senate. That ward, as I said before, is a Republican ward. In 1910 in the same ward he received 1,734 votes for the senate; in 1911 he received in that ward 1,829 votes for the senate, while in 1914, as a candidate for Congress, he received in the same ward 1,601 votes. In ward 11, which is his own ward, as a candidate for the senate he received in 1909, 1,980 votes; in 1910 as a candidate for the senate in the same ward he received 1,808 votes; in 1911 as a candidate for the senate he received in the same ward 1,904 votes, while in 1914, as a candidate for Congress, he received in the same ward 1,643 votes. There were two precincts missing, however, when he ran for Congress, which would change that from 1,643 votes to something in the vicinity of 1,800 votes or 1,850 votes. This statement shows, however, that in spite of the fact that he had represented those wards in the senate, instead of growing stronger he grew progressively weaker.

Mr. MAGEE. What is the city council? To what body does that correspond?

Mr. PROUT. It has been abolished now for about 8 or 10 years. It was formerly made up of three councilmen from each of the 25 wards of the city of Boston.

I have just referred to the case of *Mitchell v. Walsh* (2 Hinds' Precedents, par. 263), showing the well settled law as to the amount of proof and the character of proof required in a case where conspiracy or fraud is alleged. In that case the committee said:

Fraud can rarely, if ever, be proven by direct evidence, and the rule is that whenever a sufficient number of independent circumstances, which point to its existence, are clearly established, a prima facie case of its existence is made, and if this case is not met with explanation or contradiction it becomes conclusive.

That rule is also followed in the case of *Noyes v. Rockwell*, in the Fifty-second Congress, Rowell's Digest, page 716, and also in the case of *Donnelly v. Washburn* (2 Hinds' Precedents, par. 945), wherein it was held:

It must not be forgotten that bribery is a secret crime; both the parties to it are equally interested in keeping it secret; and where detected both are ready to give ingenious explanations of it.

That rule is also upheld in the case of *Abbott v. Frost* (2 Hinds' Precedents, par. 917), which was a Massachusetts case. In that case it was said:

In a great majority of cases it is impossible to prove a charge of bribery by direct and positive testimony. From the very nature of the case the only source from which such testimony can come is from the briber or the bribed, both of whom are criminals.

In the case of *Moore v. Funston* (2 Hinds' Precedents, par. 1052), it was held:

The text writers and other law authorities treating of the subject recognize the difficulty of proving conspiracy by direct evidence; and as in the case of fraud in general recognize also the propriety as well as necessity of proving distinct facts, many of them insignificant in themselves, from all of which.

however, where sufficient, a firm belief in the existence of the conspiracy or fraud may safely be deduced, and the conclusion may be a safely acted upon. In many cases circumstantial evidence is the only evidence which can be obtained, and it is also not infrequently of the most satisfactory and convincing character.

That doctrine is so well established that I will not bore the members of the committee with any further quotations concerning it.

I will now pass to the next subhead, which is really the principal subheading and the principal allegation of the contestant, and that is the allegation of conspiracy with one James P. Timilty, a Democratic senator, whose senatorial district comprises three wards, Nos. 18, 19, and 22, all of which are wards in this congressional district, Mr. Timilty also being the president of the Democratic city committee, and being, therefore, in an official position in the Democratic Party. Now, before proceeding on that line, I would like to state that we admit that Mr. Timilty would have the same right that any other citizen has to support any candidate that he sees fit, whether Democratic, Republican, Progressive, or Socialist. He would have that same right to vote for him and to support him publicly, if he so desired, if it were not for the fact that party machinery is a thing which is recognized by the laws of the State of Massachusetts, and in Massachusetts even to a greater extent than in some other jurisdictions, because in Massachusetts if a man is a Democrat he is obliged to go and record himself as such publicly, and it becomes a matter of official record that he is a Democrat. The same thing, of course, applies to the other political parties. The election machinery statutes recognize and provide for the formation of political committees for the various political parties, both ward committees and city committees, and we maintain that Mr. Timilty—admitting that he had the right as a private citizen to do as he saw fit—as president of the Democratic city committee, a senator elected by Democratic votes to the Massachusetts State Senate, and representing a Democratic constituency, had not the right to come out openly and publicly and support a candidate on the opposing ticket.

The CHAIRMAN. In order that I may get your argument in a nutshell, let me state the matter this way: Suppose Mr. Timilty all through that campaign had led the contestant to believe that he was for him; suppose all through the campaign he would come to him or send messages to him leading him to rely upon his support, and then at the eleventh hour had betrayed him, if you wish to express it that way, or if at the eleventh hour he had turned over and supported the contestee, is it your contention that he did anything unlawful? I admit that such a thing would be most unfair, to say the least, but what I want to know is whether under the laws of Massachusetts that is illegal?

Mr. PROUT. That in itself is not illegal, and that is just exactly what he did.

The CHAIRMAN. You see what I am thinking about?

Mr. PROUT. Yes, sir; and that is exactly what he did.

Mr. MAGEE. Was Senator Timilty running for reelection?

Mr. PROUT. Yes, sir; he was running for reelection at the same time. He did mislead the contestant; he did lead the contestant to believe that he was supporting him and doing everything in his power for him. It is a fact that on the night before election, in the ward

where the headquarters were established, at the Democratic club which Mr. Timilty organized, Mr. Horgan made a speech. Mr. Timilty introduced him there in the most glowing terms, and he publicly told the voters that he hoped they would support Mr. Horgan, but immediately after that he took up his station at the door on that night and the next day and instructed the voters not to vote for the contestant but to support Mr. Tinkham. Now, in itself there was nothing unlawful about this, and if that had been as far as it went the contestant would not have made this complaint, but the point of the case is this: When Mr. Timilty was sworn as a witness, if he had gone on the stand and admitted all of that, that would probably have ended it, but instead of doing that, and in spite of the fact that everybody about Boston knew the facts, in spite of the fact that everybody in Boston knew that Timilty had supported Tinkham and was responsible for his election, after Mr. Timilty had publicly stated that he had supported Tinkham, he goes upon the stand and under oath deliberately testifies that he supported Mr. Horgan; that he went right through with Horgan all day election day until 4 o'clock when the polls closed. Now, this is not only a very suspicious circumstance, but it is the best kind of circumstantial evidence of something illegal. Why did Mr. Timilty want to conceal his support of Mr. Tinkham? Everybody knew that he had instructed the voters of his ward to support Tinkham. He did not do this for the purpose of concealing his support of Tinkham, because the voters of his ward and the voters of the district at large knew about it. Therefore, there must have been some ulterior motive for committing this perjury——

Mr. RAMSEYER (interposing). You say that everybody knew it. Did they know about it on election day, or after the returns came in?

Mr. PROUT. It was known by all persons interested at all in politics for about two days before election day.

Mr. RAMSEYER. Mr. Horgan knew about it?

Mr. PROUT. Mr. Horgan was advised of it on Saturday before election day and went to see Mr. Timilty about it. He received assurances from Mr. Timilty that it was not so. Then Mr. Maylard, the former chairman of the city Democratic committee and who is now the surveyor of the port of Boston, went to see Mr. Timilty and tried to persuade him not to do this, and Mr. Timilty said there was no truth in it, and that he was not going to do it. It was done, however, and he fully intended to do it.

Mr. MAGEE. You spoke of perjury. Was this evidence taken under the order of any court, or was it simply taken in the form of depositions?

Mr. PROUT. This evidence was taken before magistrates who were selected or appointed in accordance with the provisions of the United States statutes. They administered oaths to the witnesses who testified.

Mr. TILLMAN. Did they have authority to administer oaths?

Mr. PROUT. They were justices of the peace or notaries public. The particular magistrate who administered the oath to Mr. Timilty was a justice of a State court, the Roxbury district court.

Mr. MAGEE. Did they issue subpoenas for the witnesses?

Mr. PROUT. Yes, sir; the witnesses were summoned to testify. Mr. Timilty appeared under a summons and under protest also.

Mr. TILLMAN. Nobody actually saw the ballot voted by Mr. Timilty?

Mr. PROUT. No, sir; nobody did see his ballot.

The CHAIRMAN. That is a secret ballot?

Mr. PROUT. Yes, sir; we have a secret ballot in Massachusetts.

The CHAIRMAN. You have a blanket ballot with the names of the candidates of all the parties on one sheet?

Mr. PROUT. Yes, sir.

The CHAIRMAN. Then you mark a cross in front of the name of the candidate for whom you want to vote?

Mr. PROUT. Behind his name, to be precise.

The CHAIRMAN. I think we have about the same form of ballot. Is there any provision under your ballot for voting a straight ticket by making a circle above the names of the candidates of any party?

Mr. PROUT. No, sir.

The CHAIRMAN. You must mark the name of every man you vote for?

Mr. PROUT. Yes, sir; except in the case of ward contests—

Mr. RAMSEYER (interposing). For instance, are the names of the candidates on the Democratic ticket in the same column and the names of the Republican candidates in another column?

Mr. PROUT. No, sir; the names of the candidates are arranged alphabetically. For instance, the names of all the candidates for governor are arranged alphabetically in one column and the names of the candidates for lieutenant governor are arranged alphabetically in another column.

The CHAIRMAN. With their party designation?

Mr. PROUT. Yes, sir; with the party designation after the name.

Mr. TILLMAN. Have you a provision of law that will enable you or a forum of proper jurisdiction to open up the ballot boxes and ascertain exactly how parties voted?

Mr. PROUT. It is impossible to ascertain how parties vote, except when a person who goes to vote has his vote challenged—

Mr. TILLMAN (interposing). You do not number the ballots you put in the box?

Mr. PROUT. No.

Mr. TILLMAN. And there is no check on the ballot after it goes in.

Mr. PROUT. Mr. Timilty, when testifying, refused to testify for whom he voted, as, of course, he had a perfect right to do. There is a good deal of discussion in the brief in rebuttal of the contestee as to our asking witnesses for whom they voted. We recognized it was the constitutional right of any voter in Massachusetts to refuse to say for whom he voted, but we also claim, as has been decided in innumerable election cases before committees of Congress, that any person has a right to ask that question and the witness may answer if he sees fit. In this particular case, although Timilty testified he supported Horgan; when he was asked for whom he voted he declined to state.

Mr. RAMSEYER. Mr. Prout, you stated a while ago that your law provides that a man goes on record as to whether he is a Democrat or a Republican. How does he make that record?

Mr. PROUT. In going to vote at a party caucus—

Mr. RAMSEYER (interposing). A primary?

Mr. PROUT. The primaries of all parties are held in the same voting places and the voter comes in and asks for a ballot in order to vote, and he is required to state which party ballot he votes, and then a record is kept of that voter and his party preference, and he can not change that preference without giving three months' notice.

Mr. MAGEE. Is it your contention that Mr. Tinkham would not have been elected except for this activity of Senator Timilty on his behalf?

Mr. PROUT. Yes; principally that; and also certain minor things which appear in the evidence which I will refer to as we go along.

Mr. MAGEE. But that is your main ground, is it?

Mr. PROUT. That is really the principal ground, the connection with Timilty.

Mr. MAGEE. I mean as to the result of the election.

Mr. PROUT. As to the result; yes.

Mr. RUSSELL. Does the contestee admit or deny that Timilty supported him?

Mr. PROUT. There is a little difference of opinion as to whether he admits it or denies it.

Mr. INNES. The testimony shows it.

Mr. PROUT. He was examined on that point, and Mr. Innes was rather upset because of the manner in which the contestee's counsel handled that matter in their brief. The testimony on that point, which I might as well cover now as long as we are considering it, is contained on page 483 of the record, contestee being on the stand and being examined by his own counsel:

Q. While we are on that, did you have any deal or trade with Senator Timilty about his double-crossing Mr. Horgan and supporting you?—A. I had none whatsoever, nor did I know that he was going to.

Q. (By Mr. Innes.) Well, you don't know that he did?—A. I don't know that he did. He says he did not.

Mr. MAGEE. What page is that?

Mr. PROUT. Page 483 of the record.

The CHAIRMAN. Who is testifying to that?

Mr. PROUT. Mr. Tinkham, the contestee, and again on pages 503 and 504 of the record, Mr. Tinkham being cross-examined by attorney for the contestant:

Q. And if I should recall to your mind that on the day after election in the news columns of the Transcript it was stated unequivocally that Senator Timilty had turned his ward over to Senator Tinkham, would you say that that was apt to be true?—A. I think the paper is a very conservative paper. I would not want to say that every statement that was made in the Transcript was photographic truth.

Q. Do you know that several other Boston papers, immediately after the election and at various times since, have stated, both in their news columns and editorially, that Senator Timilty did throw his ward for Senator Tinkham?—A. I did not know that there had been any editorial comment made upon that, but I did hear that one or two papers said that Senator Timilty—I won't say "threw" his ward—but that Senator Timilty had supported me.

Q. And, as a matter of fact, it was common talk throughout political circles in the city that Senator Timilty did support you?—A. I have heard that.

Q. Quite commonly?—A. I understood—that is, I heard a good many statements that he had.

And the impression to be gathered from all the testimony is that Mr. Timilty did support him.

Mr. MAGEE. What ward is referred to in this testimony as the senator's ward?

Mr. PROUT. Ward 18.

Mr. RUSSELL. Is there anything showing what influences brought Senator Timilty to the support of the contestee?

Mr. PROUT. Well, we will try to show that as we go along. Before leaving it I would like to say that the importance of the point, as far as we have discussed it here now, is in the fact, largely, that Senator Timilty denied that he did support Tinkham, and we claim that that raises a prima facie presumption that the support which was given Tinkham, and subsequently denied under oath, was given for some ulterior purpose.

Mr. RAMSEYER. Of course, Tinkham denies that also.

Mr. PROUT. Denies what?

Mr. RAMSEYER. That Timilty supported him.

Mr. PROUT. Well, as we have been saying here, he says he did not know that he supported him. He says he did not, and, again, he has heard it, and it is quite common, and the general impression is, while he does not want to say he knew Timilty was going to, or, as a matter of absolute fact, that he did, still the impression to be gathered from all his testimony is that he must admit that Senator Timilty did support him.

Mr. RUSSELL. What is the conclusive proof, if you have any, showing that Senator Timilty did support the contestee?

Mr. PROUT. That is shown in several ways. In one way, for instance, there are three witnesses who testified that Senator Timilty approached them on election day and asked them to vote for Tinkham. That is Crimmins on page 201, Devlin on page 127, and Condon on page 246. Now, the character of Senator Timilty's ward is such and his domination of that ward and the voters in it is such that it is almost impossible to get voters to come into court and testify against Senator Timilty. We did, however, succeed in getting these three men whom we happened to learn were voters who were approached by Timilty, and who also had the courage to come in and testify as to that fact.

Mr. RUSSELL. Did Timilty expressly dispute their statement in any way?

Mr. PROUT. I think he was asked about one of them. I do not think he was asked about the other two, and the one he was asked about, he denied.

Mr. MAGEE. Is it your conclusion there was any understanding or working pact between Mr. Tinkham and Senator Timilty based only upon presumption which you have already referred to?

Mr. PROUT. We have been unable to connect Mr. Tinkham personally with Mr. Timilty, but there is certain testimony in evidence which connects Mr. Timilty with Mr. Tinkham's agent.

Mr. MAGEE. If I recall, Mr. Prout, you mentioned a meeting at some club—I think some Democratic political organization—where Senator Timilty advocated the election of Mr. Tinkham?

Mr. PROUT. No, sir.

Mr. MAGEE. What was there about that?

Mr. PROUT. What I referred to—you mean here this morning?

Mr. MAGEE. Yes. I thought you said that there was some meeting of some kind where the senator recommended that they support Mr. Tinkham.

Mr. PROUT. Yes; that was a Democratic rally held in ward 18 at the Democratic club, which is Timilty's club.

Mr. MAGEE. How long was that before election?

Mr. PROUT. That was the Monday night before election. The election was on Tuesday and this was on Monday evening.

Mr. RAMSEYER. He did not publicly advocate that.

Mr. PROUT. He publicly advocated Horgan and instructed his voters to vote for Horgan, and then immediately before the voters left the place and while they were on their way out and the next day on election day advocated—that is, instructed them to vote for Tinkham.

Mr. MAGEE. Was this at a rally on the night before election?

Mr. PROUT. This was at the rally on Monday evening. There is also evidence of a meeting of the club on Sunday afternoon before the election.

Mr. MAGEE. Is there any evidence or assertion that the senator stated publicly to the gathering, either on the Sunday or on the Monday evening preceding the election, recommending the election of Mr. Tinkham?

Mr. PROUT. I do not think there was any evidence of a public speech before any large gathering of people by Senator Timilty advocating the election of contestee.

Mr. MAGEE. I mean at this particular gathering. How did he do it? Do you claim he spoke to them individually or openly and collectively?

Mr. PROUT. Individually, on Monday evening at the public meeting, but I understand there is evidence that at the club meeting, on Sunday afternoon, he did instruct the voters to vote for Tinkham.

Mr. INNES. There is nothing of that sort in the record.

The CHAIRMAN. Does this correctly state your argument: That Timilty supported the contestee—and I will say that the evidence seems to quite strongly convince me that he did support the contestee—and if he did it was, from a party standpoint, very unfair, to say the least, in my judgment. Now, are we both in accord in the belief that that in itself was not unlawful under the statutes?

Mr. PROUT. Yes, sir.

The CHAIRMAN. But your contention is, and correctly so, if I do not misquote what I believe to be your contention, that while that in itself would not show anything unlawful, the fact that when he was produced on the stand he denied he had done what seems to be strongly established by other voters, namely, that he supported the contestee, the fact that he denied that is proof there was something illegal in his action which must be explained by the contestee. Does that state your argument? I am looking for the right in asking these questions.

Mr. PROUT. We claim that that establishes the fact that there was an agreement between them and that Timilty would not have done that unless there had been an agreement.

The CHAIRMAN. That is what I wanted to get at.

Mr. PROUT. And in view of the fact that he denies it under oath—

The CHAIRMAN (interposing). The fact of the denial under oath—

Mr. PROUT (interposing). Is a suspicious circumstance.

The CHAIRMAN. And proves what?

Mr. PROUT. And proves a conspiracy. There must have been an illegal consideration for the conspiracy, else he would not commit perjury to explain it, and also the fact that Mr. Timilty on the testimony of several witnesses, was distributing money at the poles and was advocating the election of Tinkham.

The CHAIRMAN. That is proved by other witnesses and is a distinct charge?

Mr. PROUT. Yes.

The CHAIRMAN. That comes under the bribery charge?

Mr. PROUT. And we claim that he would not have done that unless he had received some consideration for doing it.

Mr. MAGEE. I had this point in mind following the suggestions of the honorable chairman, and that is whether, when the senator made that statement at the Sunday meeting or at the Monday night meeting, it was generally known through the ward that the senator favored the election of Mr. Tinkham.

Mr. PROUT. I do not believe it was generally known; that is, that the great body of voters knew it until election day.

Mr. MAGEE. Or a material body of them?

Mr. PROUT. I would say in that particular ward that they have a strong Democratic organization—the Timilty Club—that is, Timilty has it, and there is evidence as to the extent of the membership of that, but it has slipped my mind. I think it is in the vicinity of 500 or 600.

Mr. MAGEE. To what extent would you say—

Mr. PROUT (interposing). And the men who belonged to that club knew of it on Sunday afternoon.

Mr. MAGEE. To what extent would you say that that knowledge on the part of the members of this Democratic organization might go through the ward and become known generally to the Democratic voters?

Mr. PROUT. Of course the club members, in addition to being instructed themselves, were, of course, instructed to pass the word along, and also on Tuesday morning each precinct captain was stationed at the polls and Mr. Timilty covered two precincts himself, and the vote in those precincts shows the effect of his presence there and the fact of his support of Mr. Tinkham.

Mr. MAGEE. How many precincts are in that ward?

Mr. PROUT. Six precincts. He covered precincts 5 and 6, and in precinct 5, where Mr. Timilty spent most of his time on election day, the contestee received a vote of 438 per cent in excess of the vote cast for the Republican candidate for governor; that is to say, four times as many votes, and over nine times as many votes as were cast for the Republican candidate for the senate.

Mr. MAGEE. How was it in the other precincts of the ward?

Mr. PROUT. In precinct 6, which is a neighboring precinct, and where Mr. Timilty spent part of his time, the percentage runs not so large, but because of the fact of Mr. Timilty's own personality there were from two to two and a half times as many votes cast for the contestee as were cast for any other Republican officer, and in the other precincts in that ward they show a great increase, and in

the other two wards of Mr. Timilty's senatorial district, in which he spent a part of the day, and in which he has a sort of following, there was also an increase, the percentages being——

Mr. MAGEE (interposing). Give us a general idea, Mr. Prout, what you claim to be the general effect.

Mr. PROUT. We claim the general effect in ward 18 was to cost the contestant somewhere in the vicinity of 600 votes, and in the other two wards of the senatorial district 500 votes, ward 22, and also a large number of votes in ward 19, so that a comparison of the votes in Timilty's ward and the other two wards of the senatorial district with the other wards in the district will show that on account of his support and his activity Mr. Horgan lost a large number of votes and Mr. Tinkham gained them.

Mr. MAGEE. What would you estimate, if I might ask, the aggregate number?

Mr. PROUT. We would estimate the aggregate number—I will look that up.

Mr. RUSSELL. You can look up the figures and place them in the record later.

Mr. PROUT. Yes; I will do that.

The CHAIRMAN. Before you conclude, Mr. Prout, I want you to give quite some attention to the charge of the illegal use of money in the election. I want a full explanation both of the charge that money was illegally expended, and I also want a very full explanation of the defense when counsel for the contestee argues that ground of the contest.

Mr. RAMSEYER. Before he takes that up, let me ask this question: What is Mr. Timilty's business?

Mr. PROUT. He is a paving contractor.

Mr. RAMSEYER. Now you stated that he dominates those wards of his district. What class of people have you in that district? Are they native Americans or foreigners?

Mr. PROUT. No; in ward 18——

Mr. INNES (interposing). I think we can agree on that.

Mr. PROUT. I am rather afraid to go on record.

Mr. INNES. They are largely what would be called Irish-American voters in 18 and 19, and German-Americans in 22, and a number of negroes in ward 18. I do not use the hyphen because I like it but because I think that describes it.

Mr. TILLMAN. You say there are a number of negroes in ward 18?

Mr. INNES. In ward 18, Mr. Timilty's own ward, where the Republican vote is largely negro.

Mr. TILLMAN. Before you leave that point, is it clearly established that Timilty, on Sunday before the election on Tuesday, actually did advise the members of his club, the club he controls to vote for Tinkham?

Mr. PROUT. No; it is not.

Mr. TILLMAN. Where is that evidence?

Mr. PROUT. There is evidence——

Mr. INNES (interposing). If I may say so, I do not think there is any evidence of that sort.

Mr. TILLMAN. Of course, that is important as I regard it, and that is the reason I ask about it.

Mr. RAMSEYER. I just wanted to ask those questions to get a general idea of the matter before you take up the point suggested by the chairman.

Mr. TILLMAN. If you will refer me to the page where that is treated I will be obliged to you. If you can not do it now you may pass on to something else and do so later.

Mr. PROUT. That is contained in the testimony of the contestant, and also, I believe, in the testimony of one William F. Doyle. I will furnish the page later.

Now, on the question of the use of money, which I have touched on to a certain extent, that is covered, as I have already stated, in the testimony of one Edmund B. Dolan, page 307, who testified he was paid \$2 by the contestee; and Purcell, who—

The CHAIRMAN (interposing). What I want to know is whether there is any charge here that either party exceeded the amount allowed by the statute of Massachusetts and by the law of Congress to be used in electing Congressmen?

Mr. PROUT. Yes; there is an allegation on the part of the contestant that the contestee exceeded the amount allowed by the Massachusetts corrupt-practices act.

The CHAIRMAN. Now, let us get at that. What is the law of Massachusetts?

Mr. PROUT. The law of Massachusetts allows \$1,500 in a primary contest; not over \$1,500 in a primary contest for Congress, and \$3,000 in an election contest.

The CHAIRMAN. This, of course, is purely an election contest?

Mr. PROUT. Yes.

The CHAIRMAN. And your contention is that the law allows \$3,000?

Mr. PROUT. Yes.

The CHAIRMAN. How much do you claim Tinkham spent?

Mr. PROUT. We claim that Mr. Tinkham spent, on his own admission and testimony, \$4,215.34.

Mr. RAMSEYER. Is that for the election or for the primary and election?

Mr. PROUT. That is the election exclusively.

Mr. TILLMAN. Four thousand and what?

Mr. PROUT. \$4,215.34.

Mr. TILLMAN. That is, at the primary?

Mr. PROUT. No; at the election.

The CHAIRMAN. You are leaving the primary out of this altogether?

Mr. PROUT. Yes.

Mr. INNES. There was no contest in the primary.

Mr. RAMSEYER. Under your State law you are required to file an itemized statement with what officer?

Mr. PROUT. With the secretary of state.

Mr. RAMSEYER. And does his itemized statement show \$4,215.34?

Mr. PROUT. No; I will explain that. That \$4,215.34 is simply and solely what Mr. Tinkham admits himself to have spent. Now, Mr. Tinkham explains that amount by a quotation of a statement of his interpretation of the Massachusetts act which is in conflict with the Federal act.

The CHAIRMAN. That is what we want to know. How does Tinkham justify the expenditure of \$4,215.34 when the law says he can spend only \$3,000?

Mr. PROUT. He says that under the Federal act personal expenses are not included in that amount, and he includes as personal expenses printing and mailing and postage, and he claims that since the Massachusetts act is in violation—or, as he claims, is in violation or conflict with the Federal law—in spite of the fact that the Massachusetts act sets forth \$3,000 as an absolute limit, under the Federal act, he is entitled to spend in excess of that amount for printing, mailing, and postage, which he claims are personal expenses.

Mr. RUSSELL. But the Federal act provides that where there is a State act the limit shall be that fixed by the State, if under the amount fixed by the Federal act.

Mr. PROUT. Yes, sir. Therefore we claim that the limit was \$3,000 and that in exceeding that limit it was an unlawful amount.

The CHAIRMAN. Does the State act, Mr. Prout, exempt a candidate from these personal expenses, or does it require him to bring personal and all other expenses within the \$3,000 limit?

Mr. PROUT. That Massachusetts corrupt-practices act was passed in 1914 as amended—

The CHAIRMAN (interposing). What time in 1914?

Mr. PROUT. It went into effect on the 1st of August.

The CHAIRMAN. The 1st of of August, 1914?

Mr. PROUT. 1914.

The CHAIRMAN. Before the election?

Mr. INNES. August 1 before the election, and many men did their printing for this election before the 1st of August. This act took effect practically just on the eve of this election, August 1, 1914.

Mr. RAMSEYER. Have you a reference to that act?

Mr. PROUT. The act is printed almost in full in the contestee's brief. It is chapter 835 of the acts of 1912 as amended by chapter 783 of the acts of 1914.

Mr. MAGEE. What section of 1912?

Mr. PROUT. Chapter 835 of the acts of 1912 and chapter 783 of the acts of 1914.

Now, Mr. Tinkham filed his report with the secretary of state and made some suggestion, I believe that there were other expenses which he—

Mr. INNES (interposing). Why not read what he said, Mr. Prout?

Mr. PROUT. I will if I can find it here. Have you got it?

Mr. MAGEE. What was the maximum allowed under the prior act?

Mr. ROGERS. That is at page 84 of the contestee's brief, Mr. Prout.

Mr. PROUT. On that point Mr. Herbert H. Boynton, who was the assistant secretary of state and the man in charge of that particular work in the secretary of state's office, testified, and Mr. Tinkham in filing his report said:

I make no return of printing, postage, stationery, typewriting, etc., because section 343, chapter 835, acts of 1912, as amended by section 2, chapter 783, acts of 1914, says that "candidates for nomination or election to the Senate or House of Representatives of the United States shall be subject to the laws of the United States in so far as this act may conflict with such laws."

That is, he claims he comes under the Federal act and is not bound by the Massachusetts act, although the Federal act states where there is a conflict—

Mr. ROGERS (interposing). Each law says that wherever there is a conflict the other one shall prevail, does it not?

Mr. PROUT. I believe so.

Mr. RAMSEYER. Does the Massachusetts law say that?

Mr. ROGERS. Yes.

Mr. PROUT. And Mr. Boynton, who was in the secretary of state's office, testified:

I called the attention of Mr. Tinkham to the possibility of doubt as to whether his construction of the Massachusetts law was correct, stating that undoubtedly we would be obliged to submit it to the attorney general for his decision, on the ground that the State law was complete, and it required everything to be stated, and that part of the United States law in effect stated that it shall be subject to the laws of the United States so far as they were applicable and in conflict. My understanding of the law was that he should be subject to any other requirements in addition to the State law; that the State law was complete.

Mr. INNES. Mr. Boynton's contention was that there should be a return made to the State. He did not say the State law should govern, but that there should be a return made.

The CHAIRMAN. That these personal expenses should be returned?

Mr. INNES. His contention was that there should be a return made, but they did not come within the limits fixed by the State law, and that was the only contention raised by Mr. Boynton.

Mr. PROUT. Mr. Boynton stated in his testimony that the matter was referred to the Attorney General as irregular. The campaign publicity act, House Rules, 2958, paragraph 940a, at page 467, says:

This act shall not be construed to annul or vitiate the laws of any State not directly in conflict herewith, relating to the nomination or election of candidates for the offices herein named, or to exempt any such candidate from complying with such State laws.

Mr. MAGEE. As I understand it, if I got the correct impression in reading the Massachusetts corrupt practices act, that yielded to the Federal law in express terms, did it not? Just what was that State act?

Mr. PROUT. The State act says:

Candidates for nomination or election to the Senate or House of Representatives of the United States shall be subject to the laws of the United States in so far as this act may conflict with such laws.

Now, this act did not conflict with those laws, because the Federal law stated expressly that the State law should govern, and that that act was not intended to vitiate or annul the State act. The State act made an absolute limit of \$3,000 and Mr. Tinkham expended \$1,200, on his own admission, in excess of that amount.

Mr. MAGEE. If it was not the intention of the Massachusetts Legislature to yield to the Federal act, why did they incorporate such language in enacting that law?

Mr. PROUT. The idea of the State act as expressed by Mr. Boynton, who was in the office of the secretary of state and in charge of election affairs, was that the State law was complete—

and it required everything to be stated, and that part of the United States law in effect stated that it shall be subject to the laws of the United States so far as they were applicable and in conflict.

The CHAIRMAN. Do both of you gentlemen, Mr. Innes and Mr. Prout, agree that the Massachusetts law includes personal expenses and mailing?

Mr. INNES. It does, unless there is an exemption in the case of Congressmen and Senators.

The CHAIRMAN. Then it is agreed that in case of all officers, outside of Congressmen and Senators, it does include personal expenses?

Mr. INNES. It does include them.

The CHAIRMAN. But your contention is that in the case of Congressmen they are exempted by that reference to the act of Congress and by what you say is permission for a candidate to shape his expenses according to the congressional rule?

Mr. INNES. Exactly; and the second point which I was going to make is that our statute expressly provides that good faith shall be an answer to all of this, and we have shown in the record whom we consulted with and whom we got advice from and that we acted under that advice throughout.

Mr. PROUT. The contention of the contestant is that this amount was expended, and if he expended any other amounts before the 1st of August, this morning is the first time I have heard it; did he?

Mr. INNES. No; he kept his account, and you have it, checks and everything.

Mr. PROUT. And we claim he is bound by the Massachusetts act, and the spirit and the letter of the act is that \$3,000 shall be the limit, and that no greater amount shall be allowed.

The CHAIRMAN. There is not much doubt in my mind that, this being a bitter contest, both parties necessarily spent at least up to the limit of what they were allowed to spend. Now, I want to know if either party exceeded that?

Mr. INNES. Mr. Horgan's own returns exceed that. I am not raising any question about his good faith, but I think that is the fact.

Mr. PROUT. We, of course, claim that the contestee spent \$4,200 instead of \$3,000, and the contestee alleges that the contestant spent in excess of the amount allowed; but the difficulty is that the contestant's return of election expenses on page 36 of his brief shows an expenditure of \$1,771, including the payment of \$600 to his campaign committee. That is the total expense of the contestant, shown on page 36 of the contestant's first brief.

The CHAIRMAN. I have the brief here, and it is not on page 36.

Mr. ROGERS. Perhaps it is on the preceding page or the following page.

The CHAIRMAN. Yes: it is on page 38. Why do you put in here the primary expenses?

Mr. PROUT. They should not have been. So far as the election expenses are concerned, these items of expense were duplicated in some respects. He put in his statement \$600 paid to the committee, and then the committee accounted here for the same \$600. Therefore, deducting that amount and also deducting the \$55, as explained in there, the amount is reduced to \$75. In other words, if you will deduct \$55 from the \$130 returned to Congress by contestant, there will be left \$75, and that brings the amount down to \$2,943.43. That represents every cent that has been spent by both the contestant and by his committee.

Mr. MAGEE. Suppose he contributed so much to the committee, do you contend that if the committee accounted for it under the Massachusetts act he would be relieved?

Mr. PROUT. No, sir; he is obliged to account for that.

The CHAIRMAN. I understand you to say that, taking into consideration everything spent by his committee and everything spent by him, the amount comes within \$3,000.

Mr. PROUT. Yes, sir.

The CHAIRMAN. That is your contention?

Mr. PROUT. Yes, sir; it amounts to \$2,943.43. That is not denied.

Mr. INNES. We have added to the figures in our brief——

Mr. MAGEE (interposing). Was the \$600 deducted?

Mr. INNES. We say——

The CHAIRMAN (interposing). Do you contend that more than that was paid?

Mr. INNES. Yes, sir; based on his own figures. I am giving him credit for the money paid to the committee.

Mr. RUSSELL. You claim that the contestee expended more than the amount that he admits?

Mr. PROUT. In the statement that the contestee has made on page 96 of his brief, he bulks the primary expenses in with the election expenses, and he shows an expenditure of \$4,544.03 instead of \$4,500, as is allowed by law for primary and election expenses.

Mr. RUSSELL. Do you admit that that is the amount that was expended, or do you claim that there was even more than that sum?

Mr. PROUT. This is their statement of the contestant's expenses.

Mr. RUSSELL. How much is that?

Mr. PROUT. That is \$4,544.03. The contestee claims that there was an excessive amount expended of \$9.75.

The CHAIRMAN. Are you going to show that Mr. Tinkham spent more than that \$4,200? Are you going to show that he did really spend more than that, and that he spent more than \$3,000 for the things that he was not allowed to spend over \$3,000 for?

Mr. PROUT. The amounts in excess of that are a number of small minor amounts.

The CHAIRMAN. For things not included in personal expenses?

Mr. PROUT. The only one in addition to those expenditures is the amount expended for what we allege is bribery, which does not amount to a great deal, possibly not more than \$150.

Mr. MAGEE. What puzzles me is the question of the amounts that they may lawfully expend under the Massachusetts statutes. Now, I understand you to contend that the maximum is \$3,000 for election purposes?

Mr. PROUT. Yes, sir.

Mr. MAGEE. And the maximum allowed under the law for primary purposes is \$1,500?

Mr. PROUT. Yes, sir.

Mr. MAGEE. They are separate and divided?

Mr. PROUT. Yes, sir; separate and divided. Now, the figures of the contestant including everything, printing, postage, mailing, and all personal expenses of every kind and nature, show \$2,943. I do not quite understand the excess of \$41 claimed by the contestee, and I do not quite understand the bulking together of the primary ex-

penses and the election expenses of the contestant. The figures given in the contestant's brief are figures which were made under oath and which were not questioned.

Mr. MAGEE. Your contention is that Mr. Tinkham, in both the primary and election contests, expended some \$44 in excess of the maximum amount allowed by law?

Mr. PROUT. No, sir; we are talking simply of the election expenses, and we claim that he expended \$1,200 more for the election than the law allows—that is, that he expended \$4,200 instead of \$3,000.

Mr. MAGEE. What is your contention as to the amount expended by him for primary expenses?

Mr. PROUT. I do not know that they expended anything on account of the primary. He had no contest in the primary.

Mr. MAGEE. The disbursements of the contestee that are material here relate entirely to election expenses?

Mr. PROUT. The figures of the contestee relate altogether to election expenses. The amount is \$4,200.

Mr. RAMSEYER. When was the primary held?

Mr. PROUT. On the 23d of September. I hope the members of the committee are not confusing the contestant and contestee in these election returns. The contestant claims that the contestee spent \$1,200 more on his election than the law allows, and the contestee tries to explain that on the ground of a difference in the law—

The CHAIRMAN (interposing). That he is exempted by the Massachusetts statute?

Mr. PROUT. Yes, sir. There is no distinct argument raised by the contestee on the contestant's expenses.

The CHAIRMAN. Is the contestee going to argue that the contestant spent more than \$3,000?

Mr. INNES. It is a very small sum. We are simply using it to indicate how possible it is for anybody, no matter in what good faith he may be acting, to go beyond the limit in such matters as printing, for instance.

Mr. ROGERS. You say he may go over the limit, even when acting in good faith? Does the statute expressly provide for that?

Mr. INNES. Yes, sir.

Mr. PROUT. The contestee, in his figures on the primary and election returns of the contestant, deducts the \$1,200 which was duplicated, but he does not deduct the \$75, which was also duplicated, as explained by the contestant on page 39 of the brief, wherein he says:

October 20, 1914, return to Congress by contestant \$130, from which should be deducted items 17 and 10, amounting to \$55, which were duplicated.

In other words, taking the figures of the contestee, after making that deduction of \$55 on account of duplication, the amount would be brought under \$3,000, because he claims an excess of only \$44.

Now, in order to get through, I will return briefly to the matter of the conspiracy with Timilty, as shown by the facts and figures that have been presented, by the testimony of the several witnesses I have referred to, and by general rumor throughout the district that it was a matter of common knowledge. It is also a suspicious circumstance that the contestee visited Timilty at his clubroom shortly after the election. He claims in his testimony that, although he went

through the district every night and was well acquainted with it, he did not know where he was going when he went to this place, but that he thought he was going to the "Nuff-ced" Club. However, Mr. Timilty was there and introduced him and he talked. That visit shortly after the election was commented upon by the newspapers, and was a highly suspicious circumstance. One other thing which ties them up and which is given a great deal of attention in the evidence and in the briefs is the one-way circular.

The CHAIRMAN. It is now 12 o'clock, and we have no authority to sit during sessions of the House. We will therefore adjourn until 10 o'clock to-morrow morning.

(Thereupon, at 12 o'clock noon, the committee adjourned until Thursday, May 4, 1916, at 10 o'clock a. m.)

COMMITTEE ON ELECTIONS No. 2,
HOUSE OF REPRESENTATIVES,
Thursday, May 4, 1916.

The committee met at 10 a. m., Hon. James A. Hamill (chairman) presiding.

The CHAIRMAN. We will continue hearing the arguments in the case of *Horgan v. Tinkham*. Mr. Prout, you may proceed.

STATEMENT OF WILLIAM C. PROUT, ESQ., COUNSEL FOR CONTESTANT—Continued.

Mr. PROUT. Mr. Chairman, I think when I concluded yesterday I was just touching on the conspiracy between Mr. Timilty and the contestee, and had covered certain phases or certain circumstances tending to show that there was a conspiracy. I would like to again call the attention of the committee to the fact that from the very nature of a conspiracy it is impossible to show or to produce any direct evidence proving the fact of a conspiracy, or any evidence showing inevitably the existence of a conspiracy. But from what we know of human nature, and from what we know from experience and from observation, of course, we know that the greatest desire on the part of anyone engaged in a conspiracy is to keep those matters secret, and owing to the very nature of the conditions surrounding a conspiracy it is impossible to get direct evidence to prove it.

In this case we have shown from the evidence, from Mr. Timilty's own words, that he did support Mr. Tinkham. We have shown from the evidence of three witnesses that he did support Mr. Tinkham, and we have shown by reference to the common reports throughout the district that he did support Mr. Tinkham, and we have shown from Mr. Tinkham's own testimony that Timilty did support him.

Mr. MAGEE. Suppose Mr. Timilty did support Mr. Tinkham; is that wrong, in itself?

Mr. PROUT. That, I think, I touched on yesterday. I said yesterday there is nothing illegal in such support, in itself, or there is nothing wrong, even if Mr. Timilty was acting in a representative capacity as an agent or representative of Mr. Tinkham, however reprehensible it may have been in itself, it is not illegal, but taken in

conjunction with Mr. Timilty's denial of it, under oath, and the contestee's denial of it, and all the surrounding facts and circumstances, tending to show, and showing, that Mr. Timilty's henchmen did everything in their power to conceal the situation and to explain it away—I think those things should be taken into consideration by the committee.

The CHAIRMAN. Here is your argument, as I understand it. I want to get the correct understanding of your argument, so that the members of the committee may have it clearly before them when they came to consider it.

You say that Mr. Timilty, while pretending to be with Mr. Horgan, at the last moment turned over himself and swung his friends over to the support of Mr. Tinkham—and I say that, politically, was an unfair act—but I do not see where it was illegal, and I believe you agree with me in that.

But your contention is that that conspiracy, as you call it, coupled with the fact that he denied it on the stand, irresistibly forces us to conclude that there was an illegal conspiracy. Is that your argument?

Mr. PROUT. That, together with the evidence that Timilty's brother-in-law, one Craven—

The CHAIRMAN (interposing). That all goes to the point of showing that Timilty did actually support Mr. Tinkham?

Mr. PROUT. And it also shows that they made a great many endeavors to conceal that support and to coerce their witnesses into denying that support, and to deny the various connections which we showed existed between Timilty and Tinkham, and it all tends to show that there was something there they desired to hide and to keep under cover.

The CHAIRMAN. So that your argument is that the support of Timilty by Tinkham, in itself, is not unlawful, but the fact that he denied it under oath proves that there was something unlawful in this conspiracy which, you claim, prevented Mr. Horgan from getting the election.

Mr. PROUT. That denial, under oath, is one element which tends to show that, and that taken in conjunction with all the other things, the fact of Mr. Caven's denial—

The CHAIRMAN (interposing). That all goes to the point of proving that when Timilty said he did not support Tinkham he was stating what was not true. As a matter of fact, he did.

Mr. PROUT. It shows the lengths to which he would go to conceal the conspiracy, and therefore I say if he would do those things to conceal that support there was something illegal and unlawful underneath it all which he went to these lengths to conceal.

The CHAIRMAN. Suppose the committee comes to this point. Suppose we come to the conclusion that although Mr. Timilty all along lured this man on and led him to believe that he was supporting him, which, in a party sense, betrayed him, to say the least—I am strictly inclined to take that view of it—is there anything illegal in that?

Mr. PROUT. No, sir.

The CHAIRMAN. Now, I really want to get your argument, to find out, for the benefit of the members of the committee, just what your argument is.

Your contention is that the fact that when put on the stand he did not admit that, but, on the contrary, took pains to deny it, and to conceal it, is sufficient proof to justify this committee in concluding that he had done something illegal, which prevented Mr. Horgan from being elected. Is that your argument and your contention?

Mr. PROUT. That is, as far as you go.

The CHAIRMAN. I am not passing any opinion on the matter. I merely want to know just what your argument is.

Mr. PROUT. Yes; and added to that fact which you mentioned, his perjury in connection with that point, and these various other points, some of which I have touched on and some of which I have not touched on, among which is a meeting between Mr. Timilty and Mr. Innes, who was interested in Mr. Tinkham's campaign, which meeting was held at a certain hotel in Boston.

Mr. RAMSEYER. That is denied, is it not?

Mr. MAGEE. You have a secret ballot in Massachusetts, have you not?

Mr. PROUT. Yes.

Mr. MAGEE. How could anyone be made to divulge in any court, or anywhere else, how he may have voted?

Mr. PROUT. He can not be made to divulge that.

Mr. MAGEE. How can anyone say but that in this case somebody may have voted for Mr. Horgan?

Mr. PROUT. In the first place, I wanted to satisfy the committee briefly as to just what Mr. Timilty's strength was in this district, how far he did dominate it, and then I intended to call your attention to the law governing this question in regard to the exact manner in which funds should be dispensed.

Mr. RAMSEYER. As I understand you, although you may not have asserted it in so many words—as I understand it, your contention is that the senator did not testify truly.

Mr. PROUT. Yes, sir.

Mr. RAMSEYER. And that you draw that conclusion from the presumption arising from the facts and circumstances surrounding the case. What I mean to say is, how can one say, unless he has pretty good proof, that that is evidence as to how the senator voted? Have you not got to take his statement, unless you can rebut it, so that there will be something more than a presumption existing as to how he did actually vote?

Mr. PROUT. Of course, while it is impossible to ever force a man to divulge how he voted, it is his privilege to admit how he voted. In this case, Mr. Timilty refused to state how he voted.

Mr. RAMSEYER. Of course, it is true in a large number of cases that very often a large number of Democrats vote for some Republican on a ticket, and, vice versa, it is also true that a large number of Republicans vote for some Democrat on a ticket.

Mr. PROUT. Yes.

Mr. RUSSELL. Is there anything in the evidence which tends to show what his incentive was for betraying his party nominee? Was there any personal bad feeling between them?

Mr. PROUT. No; Mr. Timilty said he was as friendly to the contestant as he always had been. He said that he was friendly to him on election day, and there is no evidence of any reason for the ex-

istence of any enmity between them. On the other hand, the contestee testified that he did not know Mr. Timilty, except to speak to him, and he testified that he never had had any extended conversation with him on any subject.

Mr. TILLMAN. What is your idea of the motive that prompted Mr. Timilty to betray the contestant, if he did betray him? If you find a motive, you take a long step in the direction of finding what was actually done. If Mr. Timilty did that, he must have had a motive. What was the motive?

Mr. PROUT. The motive we allege, supported by no direct evidence, but supported by secondary evidence, is that there was a money consideration.

Mr. TILLMAN. I suspected that that was your idea. I would like to hear you on these points: I would like to hear you on the point you just mentioned, and also if money or whisky was illegally used by the contestee or his friends. I would like to hear you on that. I can understand why, if there was a free ballot, there would be some justification in seating the contestant. I would like to hear you personally on those three points.

Mr. RAMSEYER. Suppose Mr. Timilty had gotten on the stand and admitted and said that he voted for Mr. Tinkham, and that he told his friends to vote for Mr. Tinkham. How would that affect your case?

Mr. TILLMAN. That would not in itself be any justification for seating the contestant.

Mr. RAMSEYER. Would that strengthen or weaken your case, if he had admitted that on the stand?

Mr. PROUT. If he had admitted on the stand that he had supported the contestee and there were no rumors of alleged corruption, that would, of course, have weakened the contestant's case.

Mr. TILLMAN. I wish you would answer the question I asked you, and also address yourself to the other point of unfair methods with cards and posters, and otherwise. I think that is the crux of the case.

Mr. PROUT. There are one or two other things I would like to refer to first, if there is no objection.

Mr. TILLMAN. Certainly. I simply wanted to be sure that you would develop the points I referred to before you get through.

Mr. PROUT. I would like to refer to this matter of the alleged conspiracy, and also to refer to this circular and save your time, because, while it may be said that that is not very important, I would like to point out where it is important.

Mr. RAMSEYER. Have you that exhibit here?

Mr. PROUT. Yes; that is in the record in several places, and the original exhibits have also been filed with the Clerk of the House. You will find a copy of that on page 431 of the record. That is what is referred to as the "One way" circular. The "One way" circular was a circular, of which you have a copy, which was sent out through the district on the Friday and Saturday before election day, which was on the following Tuesday. The originals of that circular have been filed with the Clerk of the House, and I presume that they are now in the possession of the Clerk of the House of Representatives. That circular was signed by seven Democratic voters in that district.

The CHAIRMAN. What page of the record is that on?

Mr. PROUT. It is on pages 431 and 432 of the record.

The CHAIRMAN. What is the number of the exhibit?

Mr. PROUT. It is contestant's Exhibit No. 11 to the testimony of James H. Barry.

That circular was signed by seven Democratic voters in that district. And it appears in evidence that at least five of them were enrolled Democrats and members of Timilty's club. Under the laws of Massachusetts it required one signature in order to make that a legal circular.

The CHAIRMAN. Why was it called the "One way" circular?

Mr. PROUT. It was called the "One way" circular because it was headed "The one-way game exposed," and we have referred to it as the "One way" circular for the sake of brevity.

There were several reasons why that circular was introduced in evidence by the contestant. In the first place, when the circular was originally referred to, several of the witnesses summoned by the contestant, who were friendly to the contestee, denied ever having signed that circular or having known there was such a circular; and after that it was shown by several witnesses that a large number of copies of this circular were thrown from the building in which the contestee had his office and from a height which would indicate that they came from the window of the contestee's office on to a Democratic rally which was being held on the street below, at which the Democratic governor of the State was speaking, and in several other ways the connection between the contestee and that circular was established. The circular became a very important exhibit for the reason that we find that the signers were members of the Timilty Club, and our contention is that the signatures were obtained by Mr. Timilty, again establishing the connection between him and Mr. Tinkham as well as the fact that Mr. Timilty denied any knowledge of the circulars and denied cooperating in any way in getting it out, and also denied that any consideration of any kind was paid, while the evidence shows—the evidence of contestee's witnesses as well as contestant's witnesses—that Mr. Timilty did know about the circulars, and that shortly after it was sent out broadcast Mr. Nicholls, a friend of contestee, finally admitted responsibility for these circulars and testified that when he learned there was some commotion in the district in regard to the signatures telephoned to Mr. Timilty, and Mr. Timilty brought the signers to Mr. Nicholls's office, and there they executed affidavits, copies of which are in evidence, to the effect that they did sign that circular.

It also appears in evidence that seven of the signatures were obtained in Mr. Timilty's clubroom by Mr. Timilty's brother-in-law, Mr. Craven, and Craven, in testifying as to who made him obtain the signatures, or how he happened to get them, denied that he did it at the behest of Mr. Tinkham or any of his agents, and said he did it for an old-time friend of his, and that he was so friendly to him that he would do things for him in favor of Tinkham rather than do what Timilty wanted him to do, although he was always known as a heeler of Timilty's. This man, whose name was Broadwin or Broadbent—it is given both ways in the evidence—died several days before Craven testified, and I desire to call the com-

mittee's attention especially to the fact that this man Craven, in spite of his protestations of his long acquaintance with Broadwin or Broadbent, in view of the fact that the members of that man's family could not see any good reasons why he should do this for him, that this man Broadbent or Broadwin was selected because it was known to Craven that Broadwin was dead, and therefore he put this on Broadwin, who died on January 26, 1915. They fastened this circular, this "One-way" circular, on to Broadwin because he, being dead, could not be summoned, and he would present an unpassable wall beyond which they could not go and could not make any inquiries in regard to the circular which he sent out and in regard to the consideration which was paid for it.

The production of this dead man, Broadwin, we think, in addition to that fact, is a suspicious circumstance, because when people who are confronted with allegations of this kind go to the extreme length of talking about a dead man and holding him responsible for such things, we say that that in itself is an extremely suspicious circumstance. -

In addition to that is the evidence that Timilty represented that he knew nothing about it, when, as a matter of fact, he took the men to Mr. Nicholl's office to get them to make affidavits, showing that he was deliberately lying there, and that is substantiated by the testimony of Mr. Nicholls as well as the men who made the affidavit that they were taken to Nicholls's office by Timilty.

There is also the evidence that Mr. Nicholls did not know Mr. Broadbent or Broadwin and that none of the men interested in Tinkham's campaign knew him, thereby showing that Broadbent was not interested in Tinkham's campaign, but was introduced into the case for the purpose of stopping any inquiry along that line.

THE CHAIRMAN. Did you ever find out whether the men who signed the circular got any money?

MR. PROUT. There is evidence to the effect that this man Craven was paid \$50 for obtaining the signatures. There is evidence of rumor that Mr. Craven got \$50 for getting the signatures. There are also other things in connection with the "One-way" circular.

There is the testimony of Robert F. Fanning, on page 182, who made affidavit that his signature was put on without his knowledge or consent, but who later made affidavit that he did sign it for Mr. Nicholls. That was a second affidavit, and when he went on the stand he endeavored to disown his first affidavit, and to deny that he ever made it.

There was also the testimony of one Gormley that he did not sign it, and that Craven had told him he signed his name to it, and that Gormley had heard stories through the district that there was a frame up going to be executed, and that witnesses were going to be produced who would testify, who were going to testify that he did sign the circular, and that they saw him sign it.

MR. RAMSEYER. Were any of those matters ever taken to the grand jury?

MR. PROUT. No.

MR. RAMSEYER. If Craven got \$50 he ought to be in jail, ought he not?

Mr. PROUT. Craven has a criminal record which is in evidence, showing, I think, about 20 convictions, but he, being a brother-in-law of Senator Timilty, and Senator Timilty being a strong man in Suffolk County, he had very little difficulty in regard to that.

The CHAIRMAN. So that you did not put him in jail because it would not have any corrective effect on him, after all these repeated failures?

Mr. PROUT. There is another thing I would like to mention in connection with the alleged conspiracy, which is important, first, because it injured the contestant and, secondly, as establishing the conspiracy between Mr. Timilty and Mr. Tinkham, and that is the friends of the contestant had one circular which was to be sent broadcast throughout the district to every enrolled Democrat and to every unenrolled voter, making about 21,000 voters in the district to which that circular was to be sent.

For the purpose of having it sent to the Democratic unenrolled voters in the district, contestant, sometime prior to the election, and before he knew of the action of Mr. Timilty, engaged Mr. Timilty's secretary, John J. Sullivan, who had a corps of workers for the mailing of political literature; he engaged Sullivan to send out his circulars, and it appears in evidence that on the Friday or Saturday before election day, after the man who was hired to fold the circulars had folded 15,000 and delivered them, Sullivan told him to fold no more, with the result that between 5,000 and 7,000 of the circulars were never sent out to the Democratic and unenrolled voters of the district, and in view of the fact that it was the only circular being sent out and gave the contestant's record in great detail, and also contained some comments on the contestee's record, together with indorsements in favor of the contestant, we feel that the fact that it did not go to 7,000 voters of the district, deprived the 7,000 voters of the knowledge of the relative merits of the two candidates, to which knowledge they were entitled, and which it was necessary for them to know in order to arrive at an intelligent decision as to how to vote. It deprived the contestant of a large number of votes which he otherwise would have had. It showed the length to which Mr. Timilty and his employees went in depriving the contestant of his rights as a candidate, and also tends to show that in order to do those things, those desperate things, there was something buried in the woodpile other than a mere desire to fool the people by a smart political trick.

There is also evidence (by Lally and Tobin), which, of course, is denied, but which I have already referred to, as to a meeting which Mr. Timilty and Mr. Innes had at a hotel known as the New Tremont House, in Boston, which is testified to on pages 290 and 291, and also on page 311 of the record.

Mr. Timilty denied that he had been at that hotel for a long period of time, but we submit, however, that it is very natural for Mr. Timilty to deny that, and in view of the subsequent facts we think it is very probable that he did meet somebody there, and that they then and there arranged it for the consideration for this scheme.

There is also evidence, which is also denied, that Mr. Timilty and Mr. Tinkham met at Mr. Innes's office. You will find that testimony on page 352 of the record.

There is also evidence at some other place to the effect that these men met at Mr. Innes's office a day or two after election day and were overheard arranging for a celebration.

As far as the fact of having Timilty's support is of importance I would direct the attention of the members of the committee to the evidence contained on pages 5, 6, and 7 of the contestant's original brief—that is, the brown-covered brief—from the testimony on pages 5, 6, and 7 of that brief it is clear that Mr. Timilty has a very strong hold on the voters in that district, as shown by the testimony of John A. Copp, which appears on pages 345 and 346 of the record. That testimony is as follows:

Q. Well, would you state whether or not Mr. Timilty has any political strength outside of ward 18?—A. I don't think he has much strength. Well, he has about 700 friends in 22. That is a fact. He has 900 votes in 19, and if he stayed in bed or had diphtheria or was dead they would vote for him. Seven hundred in 22, 900 in 19, and 1,000 in 18 is 2,600 votes, and you can't beat him at the primaries. You are only wasting your time.

Q. Do you think the 700 voters in 22 are as loyal to him as the 1,000 in 18 are?—A. Sure; because he has delivered the goods for them and helped them.

That view is not only the view which is borne out by the other witnesses who testified on that point, but is also the common opinion of people conversant with political affairs in Boston, and who are familiar with Mr. Timilty's strength.

I will now dwell briefly on the matters which Mr. Tillman wanted me to discuss. As I remembered it, you referred to the matter of the use of liquor—

Mr. TILLMAN (interposing). And money.

Mr. PROUT. And money. As far as the use of liquor was concerned, evidence of the extensive use of liquor in behalf of the contestee is contained in the record. Some evidence has already been referred to in regard to the giving of a dozen vials of whisky to one Keyes, who had been in the employ of contestee, and there is also further evidence in regard to that subject on pages 264, 290, 296, 338, 356, 358, and 363. That shows a widespread distribution of liquor by owners of saloons, who went frequently to contestee—

Mr. TILLMAN. Is that all in your brief?

Mr. PROUT. Yes.

Mr. MAGEE. Under the election law in Massachusetts, is liquor allowed to be sold on election day?

Mr. PROUT. Yes; liquor is sold on election day in Massachusetts, of course, in many unlicensed places, and also in liquor places having a hotel license, which requires the expenditure of 10 or 15 cents for one hard-boiled egg.

Mr. MAGEE. No places are closed under the law, in Massachusetts, on election day?

Mr. PROUT. On election day the ordinary barrooms are closed, but the cafés and hotels are allowed to remain open.

Mr. INNES. You mean the hotels.

Mr. PROUT. The places where they sell food.

Mr. INNES. Where a man goes in and sits down and orders some food. He goes in and sits down and gives an order to a waiter for something.

Mr. RAMSEYER. What is your kitchen bar? I see that is referred to in the brief. Is that a blind tiger?

Mr. PROUT. Those unlicensed places which abound in this district.

The CHAIRMAN. About how many of those places would be opened in that district or in the territory adjoining the district; that is, places open under this license, which, as I understand it, corresponds to the Raines law license in New York, where you buy a sandwich and get a drink.

Mr. INNES. So far as that is concerned, Mr. Chairman, there was no evidence that there were any kitchen barrooms, and I do not know of any. I never heard of any kitchen bars in our city.

The CHAIRMAN. What do you mean by kitchen barrooms?

Mr. PROUT. That is what Mr. Ramseyer referred to, and is a blind tiger.

The CHAIRMAN. They have no licenses at all?

Mr. PROUT. Yes; that is true. As far as licensed hotels in and around that particular district are concerned, I should say there are 8 or 10 of them at least.

Mr. RAMSEYER. Hotels?

Mr. PROUT. Yes. That includes the Hotel Langham, Potters Hotel, the Highland Hotel, and the New Tremont House.

Mr. INNES. There might be 10 in the entire district. I think that is a fair statement.

Mr. TILLMAN. The Massachusetts law prevents the use of money or anything of value to influence the voters?

Mr. PROUT. Yes.

Mr. MAGEE. It is true, is it not, that at these hotels no person could get a drink unless he purchased some food with it?

Mr. PROUT. Yes; that is true; but that is evaded.

Mr. MAGEE. That is upon the theory that he should buy a meal.

Mr. PROUT. Yes; but the meal usually consists of a hard-boiled egg, which is used over and over again.

Mr. INNES. They have to pay for it.

Mr. PROUT. They pay for it, but they never eat it.

In addition to that use of liquor, there is also the use of liquor which I spoke of yesterday. Craven spent large sums of money in Potters Hotel buying liquors. He, in his own testimony, admitted that he had bought drinks for various voters in that ward, and there was also evidence introduced showing that there was also liquor in a private dwelling house close to one of the polling places on election day.

As far as the use of money is concerned, in addition to what I referred to on yesterday—on yesterday I spoke of the payment of money to one Dolan, which is referred to on page 307 of the record, and also to one Purcell, which is referred to on page 107 of the record, and also to one Sheppard, a colored man, for distributing posters.

Mr. INNES. Circulars; that is in the record.

Mr. PROUT. That was \$27.85. Then there was an amount paid to one Mason for holding a rally for colored persons, of which no itemized account was made. The amount of that was \$58.75. Then there is further testimony in regard to that, the testimony of John J. Devlin, on page 127 of the record, and also the testimony of one W. J. Lally, on pages 290, 296, and 305 of the record; the testimony of Peter J. White, on page 309, the testimony of Joseph A. Freeman,

on page 285, in reference to \$50 paid to the secretary of the Kearsage Club; the testimony of Keyes, and the testimony of McLaughlin, as to the demands of Mr. Duffin, and the testimony of the contestant on pages 358, 359, 360, and 363; and then also the testimony of Michael J. Redding, at page 262, in regard to the payment of \$17 to one Turley and the payment of \$10 to the Democratic Central Club; and also the testimony in regard to the giving of a check to one Penshorn, which testimony appears on page 265 of the record.

As far as that check for \$50 is concerned, I do not want to mislead the committee. I would say there was a check produced at the hearing for \$50, which was paid by the secretary of the Republican legislative committee of the Massachusetts Legislature to Mr. Penshorn. Whether that check, which the evidence, as far as we are concerned, shows Mr. Penshorn says was paid by Tinkham or for Tinkham, this other check was paid for some other purpose. It is possible it was the same check, and it is also possible there were two different checks.

There is also the testimony of one Carl Herman Aspacher, on page 330 of the record, who testified that he had been paid \$5 for tickets for some dance, and also testified that any organization that went to Mr. Tinkham could get at least \$2.50 for dance tickets.

That is important for several reasons, as a large part of these things, particularly as far as dance tickets are concerned, were made for campaign purposes, and there was no one of them accounted for in the list of expenditures as filed by the contestee.

In addition to the evidence in regard to specific payments there is also the evidence of a great many witnesses, such, for instance, as that found on page 273 and also that found on page 276 of the record, that it was the general feeling that Mr. Tinkham was loosening up. "Men that would be complaining before that, afterwards they did not have any complaint to make—they were all fixed up." Then there is other general evidence to the effect that toward the latter part of contestee's campaign the feeling changed throughout the district. In fact, as expressed by one witness, instead of being called, as he had previously been called, George "Hold On" Tinkham, he was referred to as George "Golden" Tinkham.

Then there is also the evidence, on page 325 of the record, of the payment of \$5 to Charles Wonderley and the evidence, on page 326 of the record, of the payment of \$5 to Thomas Douglas.

In addition to that there is the testimony in regard to promises of positions given to one Phelan. I believe the contestee had promised him a job.

MR. INNES. That is not so.

MR. PROUT. Then what was it?

MR. INNES. He gave him a letter of introduction to somebody. He told you all about it.

MR. PROUT. Then there was also the testimony—which was denied—of a promise of a position as secretary to one Sheerin and the promise of a position to the daughter of a voter named Harol. Harol testified that if he made that statement, that Mr. Tinkham had promised the position, he probably made it jokingly.

There is also the testimony, on page 359, of the payment of \$20 to one Donahue and the payment of \$10 to one Charles Smith.

Mr. RAMSEYER. Did Senator Horgan and Senator Timility serve as colleagues in the Massachusetts State Senate?

Mr. PROUT. Yes.

Mr. MAGEE. For how long?

Mr. PROUT. Mr. Horgan served three years and Mr. Timility served three years, but not all at the same time. I think there was only one year that they served in the senate together.

Mr. RAMSEYER. When did Mr. Tinkham quit the State senate?

Mr. PROUT. In 1912.

Mr. INNES. It was in the same year when he ran for Congress.

Mr. RAMSEYER. Was Mr. Horgan in the last legislature?

Mr. PROUT. Mr. Horgan just completed his term as senator. Mr. Tinkham completed his term as senator in 1912, two years before that.

Mr. INNES. That is correct.

Mr. PROUT. As far as the effect of the Walsh-Tinkham card is concerned, which I spoke of yesterday, somebody inquired as to the standing of those young men. One of the signers was the son of a former chairman of ward 22 and the other was the son-in-law of a prominent Democrat, and both were well known and their party affiliations were well known; that is, they were well known as Democrats throughout that ward who were friendly to Tunilty.

At one part of the record there was some testimony to the effect that the signature of Reynolds was put on without his knowledge and consent, but he testified that it was done with his knowledge and consent; that he assisted in sending the cards out.

The fact that the cards were sent out linking the name of the Republican candidate for Congress with the name of the Democratic candidate for governor, being signed by two well-known Democrats of the ward, was to convey the impression that both of the names were the names of Democrats, and I think that is of great importance. Of course, it is true that the party designation is placed after the name of the candidate; but you gentlemen know that the voters are often careless, and they get the name of a candidate in the wrong column; in a great many cases they pay no attention to what comes after his name.

The only other payment of money was the payment of money for a ticket to the dinner of the colored Masons, which the contestee admitted and which was not accounted for in his list of campaign expenses, and concerning which he testified that he attended after the dinner was over and while the festivities were in progress.

Mr. TILLMAN. What did that dinner cost?

Mr. PROUT. \$10.

Mr. ROGERS. Do you contend that expenditures of that sort, which might be fairly attributable to the fact that a man was in a campaign, or which might not be at all attributable to that fact, should be included in a campaign return? I am referring to such things as the purchase of tickets.

Mr. PROUT. Where a man purchases tickets for organizations to which he does not belong and for an affair which he does not go to, where it is in evidence that anyone who has tickets to sell can go to him and get at least \$2.50 in exchange for his tickets, and where it is also a well-known fact in Boston that it is very cheap to get

tickets printed and easy to sell tickets, whether there is any organization or not, and get money that way, it is only a very superficial way to gloss over the payment of money; and that being the case, we maintain that it should be counted.

Mr. ROGERS. You claim that the evidence is fairly indicative of the fact that it was a subterfuge in this case?

Mr. PROUT. Yes, sir.

The CHAIRMAN. Did Mr. Tinkham attend this dinner you have referred to?

Mr. PROUT. You mean the colored Masons' dinner?

The CHAIRMAN. Yes.

Mr. PROUT. Yes.

Mr. INNES. Is there any evidence of that fact?

Mr. PROUT. Yes.

Mr. INNES. The organization was not a political organization; it was a fraternal organization.

Mr. MAGEE. Is there any statute in Massachusetts providing that persons may not approach a candidate for public office for the purpose of selling tickets of this character?

Mr. PROUT. No, sir.

Mr. MAGEE. I think we have such a statute in our State.

Mr. TILLMAN. Along the line of Mr. Magee's suggestion, suppose a candidate should give a dinner costing \$500, would you consider that he should report that fact, the expenditure of that money among his expenses?

The CHAIRMAN. Do you think he would have attended the dinner of the colored Masons if he had not been a candidate?

Mr. PROUT. Undoubtedly not.

Mr. TILLMAN. Suppose he gave a feast that cost him \$500. Should he report that money among the items of his expenses?

Mr. PROUT. If it was given in the midst of a political campaign.

Mr. TILLMAN. That is what I mean.

Mr. PROUT. There is no question in my mind but what he should make a report of such an expenditure.

Mr. TILLMAN. Then he should report the expenditure of the \$5 in you have referred to in the same way, should he not?

Mr. PROUT. Certainly; the mere amount does not make any difference.

Mr. RAMSAYER. Do you think it is probable that a candidate would attend a dinner or any other gathering and pay his way in if he was not a candidate? In other words, do you think he would not have attended that dinner if he had not been a candidate?

Mr. PROUT. If a man goes to an affair and pays 50 cents for a ticket, if he pays 50 cents for a ticket to a dance and does not dance, it is a legitimate political expense, and it should be returned as such. Where a man buys 5 or 10 tickets and does not buy them for himself. I say that that is not a legitimate expenditure, and also that it should be returned in the list of his expenses.

Mr. MAGEE. Is there any statute in Massachusetts which prohibits a candidate from furnishing food or drink to any person when he is a candidate?

Mr. PROUT. Yes, sir.

Mr. INNES. Drink; not food.

Mr. PROUT. The statute prohibits the furnishing of anything of value to anybody without making a return for it. That is the corrupt practices act which also prohibits the giving of drink for political purposes, whether it is returned or not.

Mr. MAGEE. Whether it is buying a drink or buying a dinner. I think our statute specifies in regard to that.

Mr. PROUT. The Massachusetts statute does not specify; it is not specific.

Mr. INNES. The Massachusetts statute explicitly exempts any form of entertainment called "private hospitality." Whatever that covers is a question of interpretation.

Mr. PROUT. The only thing remaining which I want to touch upon, I believe, is the matter of the votes cast, as to the contestee's allegation that the contestant was not a strong candidate. I have already explained to the committee that the district is a Democratic district, and has been a Democratic district for 10 or 12 years, and has always sent Democrats to Congress, and is Democratic for other offices, for President, for governor, and so on down the line, and a compilation of votes in the various wards for ward offices, not only on this particular day, but on every election day, has always shown it to be Democratic for every office, with the exception of this particular one.

Mr. INNES. Do you want to make that statement, Mr. Prout?

Mr. PROUT. In a broad way.

Mr. INNES. In the face of our figures here? It seems to be a waste of time, because the figures show that that is not so.

Mr. PROUT. As far as the votes in the wards in 1914 are concerned somebody requested yesterday that we get that and I have the vote in the various wards here, and I will read that into the record. These figures cover the vote for governor, for lieutenant governor, for Congressmen, for the senate—that is, the State senate—and for the governor's council.

In ward 18 the Democratic vote for governor was 1,256 and the Republican vote 655; the Democratic vote for lieutenant governor was 1,149 and the Republican vote for lieutenant governor was 666; the Democratic vote for Congressman was 920 and the Republican vote for Congressman was 934. The Democratic vote for the State senate, that is, the independent Democratic vote, was 1,338 and the Republican vote for the State senator was 546. The Democratic vote for the governor's council was 1,141; the Republican vote for governor's council was 707.

In ward 19 the Democratic vote for governor was 3,031, while the Republican vote for governor was 486. The Democratic vote for lieutenant governor was 2,852, while the Republican vote for lieutenant governor was 565. The Democratic vote for Congressman was 2,641, while the Republican vote for Congressman was 928. The Democratic vote for State senator was 3,225, while the Republican vote was 380. The Democratic vote for governor's council was 2,947, while the Republican vote was 604.

In ward 22 the Democratic vote for governor was 2,562, while the Republican vote was 1,412. The Democratic vote for lieutenant governor was 2,333, while the Republican vote was 1,559. The Democratic vote for Congressman was 1,951, while the Republican vote was 1,972. The Democratic vote for State senator was 2,595, while

the Republican vote was 1,371. The Democratic vote for governor's council was 2,342, while the Republican vote was 1,625.

The total Democratic vote in wards 18, 19, and 22 for governor was 6,849, while the total Republican vote for governor was 2,553. The total Democratic vote in wards 18, 19, and 22 for lieutenant governor was 6,334, while the total Republican vote was 2,790. The total Democratic vote for Congressman in wards 18, 19, and 22 was 5,512, while the total Republican vote for Congressman was 3,834. The total Democratic vote for State senator in wards 18, 19, and 22 was 7,158, while the total Republican vote for State senator was 2,297. The total Democratic vote in wards 18, 19, and 22 for governor's council was 6,430, while the total Republican vote for governor's council was 2,936.

As far as a comparison of votes, either on that day or on previous days is concerned, and the method of arriving at that, I would call the attention of the members of the committee to the case of *Cook v. Hinds*, where, in quoting McCrary on Elections, the committee said:

When the voter can not, by reasonable diligence be found, or being found, refuses to state for whom he voted, it may be shown by circumstances. And here great latitude must be allowed.

And in the same case reference was had to extraneous circumstances.

Mr. OGLESBY. Was that the case in which the witnesses were charged with having received something of value for their votes?

Mr. PROUT. Yes, sir.

It is shown generally that the men who employed these miners were favorable to Mr. Cutts; that they were brought to the polls by Republicans; that their votes were challenged by Democrats and greenbackers (contestant's friends) and their votes urged and directed by Republicans.

And the fact that they were brought to the polls by Republicans and their votes challenged by the people of the opposite party was held to be indicative of their vote. And again in the *Broad Seal* case (1 *Hinds*, par. 799) it was held that—

Although in numerous instances the voter, being examined as a witness, voluntarily disclosed the character of his vote, yet in many cases he either did not appear, or, appearing, chose to avail himself of his legal right to refuse to answer on that point. In such cases the proof of general reputation as to the political character of the voter, and as to the party to which he belonged at the time of the election, has been considered sufficiently demonstrative of the complexion of his vote.

Then, again, in the case of *Bromberg v. Haralson* (2 *Hinds*, par. 907) it was held:

It would perhaps be fair to assume that the whole vote cast at this precinct in excess of the vote of two years before, when no such influence existed, was cast by voters who came there under the influence of the corrupt practices and promises disclosed in the evidence.

And this when the only evidence disclosed was a rumor circulated among the voters that in order to obtain certain material benefits it was necessary for them to vote the Republican ticket, which rumors were not traced to contestee, the committee holding that it was his duty to disabuse the voters of the wrong impression.

Now, Mr. Chairman, as to the votes as cast and the contention of the contestant as to how they should be counted—but before I get to that particular matter I see I have made a note here in reference to a

matter that I want to speak about briefly. That is in regard to a contention in the brief of the contestant that the contestee admitted that he paid the sum of \$1 on one occasion and another \$1 on another occasion to a voter by the name of Boland. I want to retract that statement. It was an error, and contestee did not accept that dollar, but he denied that he did make that payment, and I do not want to have it stand that I charged him with that when it was an error.

Mr. MAGEE. Do you contend that you raise any more than a presumption of wrongdoing?

Mr. PROUT. No, sir: we claim there is direct evidence—in many cases specific evidence and in some cases uncontradicted evidence of wrongdoing. For instance, in the matter of the election returns, that is admitted—

Mr. MAGEE (interposing). I mean in reference to the votes and the question raised by Mr. Timilty.

Mr. PROUT. There is very direct evidence of the payment of the money to the voters and of the use of liquor. Then there is a lot of other direct evidence which I think I have referred to on those points.

Mr. MAGEE. What is it upon which you rested on a presumption? Was that in reference to the conspiracy item?

Mr. PROUT. I can not recall just in what connection I made that statement.

Mr. MAGEE. I had an impression yesterday that you raised the question of presumption.

The CHAIRMAN. I think that was where he said the fact that Senator Timilty had denied on the stand that he had entered into a conspiracy raised the presumption that there was something illegal in his action.

Mr. MAGEE. That was what I was trying to get at, whether in your contention in regard to the matter of conspiracy you rely on presumption.

Mr. ROGERS. Can you give us, in a few words, the precise things which you allege as having been committed by Mr. Tinkham, personally, in violation of either statute law or common law to prove conclusively an illegal use of money, bribery, or any other similar unlawful act.

Mr. PROUT. Of course, it is not necessary under the law that those things shall be proven to have been done personally by Mr. Tinkham. It is sufficient if they were done in his behalf, with or without his knowledge, by his agents, if he as a candidate got benefit from them. In that case it is the same as if he did them himself.

There are several things in the evidence which involve Mr. Tinkham personally; that is, the payment of various sums of money for tickets and various expenditures which were not included in his returns.

Mr. TILLMAN. I wish you would develop the first question Mr. Rogers asked you. He asked you to show what was actually done in the interest of Mr. Tinkham which was illegal, whether he was the beneficiary of it, or whether he did it directly.

Mr. PROUT. As far as things he did directly are concerned, I have answered that. As far as the things were done in his behalf were concerned, and which did affect the issue, that includes practically everything. And I think, as I developed it yesterday and as I have

shown it to-day, in the payment of money, the use of liquors, the intimidation of voters by Timilty, some of which was done in his behalf, and the facts as we look at them from this end all show that that was of some material benefit to him.

Mr. ROGERS. Do you allege that the only thing which Mr. Tinkham did personally and which can be complained of was the purchase of these tickets, for which he failed to make a return?

Mr. PROUT. In addition to that, the engineering of the Walsh-Tinkham card, paying for it and paying for these tickets. That is all I have referred to as personal which was unaccounted for.

Mr. MAGEE. Suppose Senator Timilty or some of his helpers did something of which Mr. Tinkham had no knowledge. Is it your contention that if they did anything themselves which was in direct violation of law, which was illegal, that that would affect the status of Mr. Tinkham under your Massachusetts law?

Mr. PROUT. Yes, sir; anything done by anybody in behalf of Mr. Tinkham, provided they were agents of Mr. Tinkham.

Mr. MAGEE. That is exactly what I am getting at, whether you do not have to establish the relation. If you do not have to establish that, what would prevent any two, three, or four persons vitiating the election of any candidate?

Mr. PROUT. Of course, some of that is so.

Mr. MAGEE. As I understand it, under your law you must establish some relation existing between the candidate and the parties charged with the wrongdoing.

Mr. PROUT. Under the general law the agency can be presumed by the doing of acts with the knowledge of the principal. I do not mean to contend that any Tom, Dick, or Harry opposed to a candidate could go out and do things which were illegal and then fasten them onto the candidate simply because he did them on behalf of the candidate.

Mr. MAGEE. What I mean is this: I am asking for information——

Mr. RUSSELL (interposing). If he is a bona fide agent, then he acts directly for the beneficiary, and then the candidate would be responsible for his action?

Mr. PROUT. Yes.

Mr. ROGERS. How many items are there disclosed in the evidence uncontradicted, of cases where Mr. Tinkham made expenditures which you say are attributable to his campaign and which are not returned in the statement to the secretary of the State of Massachusetts?

Mr. PROUT. There was the purchase of tickets——

Mr. ROGERS (interposing). Can you be a little specific in the answer to that inquiry?

Mr. PROUT. I think I have already touched on most of those.

Mr. ROGERS. If you could combine them at this point it would be useful.

Mr. PROUT. You mean everything?

Mr. ROGERS. I would like to have a reference at this point to every case where unreturned campaign expenses are charged by the contestant.

Mr. PROUT. There is the evidence of Edmund Dolan at page 307 of the record. Then there is the testimony of the contestee at page

492 of the record in reference to a payment of \$58.75 to Mason, and also the testimony of the contestee on page 493 of the record in reference to the payment of \$27.85 to Sheppard.

Mr. INNES. They were returned, of course?

Mr. RAMSEYER. Those references are on your brief?

Mr. PROUT. Yes. The last two amounts to which I referred were returned. The references are contained in the brief under that head and I imagine it would save time to refer to that page in the brief.

Mr. RUSSELL. It seems to me if you could make a summary of those things and put it in the record at this point, it would serve the purpose desired.

Mr. PROUT. They are all in the brief, in the brown-covered brief.

Mr. ROGERS. I have not read the brief for several days, and I do not recall that there is a specific place where the unreturned election expenses, as charged, are included.

The CHAIRMAN. On page 25, under the heading "Lavish use of money in bribery of Democratic voters" there seems to be a reference to all of these instances.

Mr. INNES. Perhaps I can assist Mr. Prout. He makes an allegation in regard to a dollar to Dolan——

Mr. PROUT (interposing). I would refer the committee, in order to save time, to page 25 and page 26 of the brief in regard to that particular point. There is no division made as to the money that is alleged to have been paid for which no return was made, but in the contestee's brief there is a copy of his return.

Mr. RAMSEYER. Then, on page 35 of your brief you give a list of his expenditures—the amount of his expenditures—showing what was accounted for.

Mr. PROUT. Those are expenditures.

Mr. RAMSEYER. The second item, which is said to be not accounted for in your statement, is "Amount paid to Anchor Linotype Co., \$2,139."

Mr. PROUT. That was not accounted for in his return because of his belief or interpretation of the law that printing was a personal expense, and therefore he was exempt from accounting for it.

Mr. RAMSEYER. Your contention is that he should have accounted for it?

Mr. PROUT. Yes; as well as all the other things which follow that statement.

Mr. RAMSEYER. Suppose the committee finds with you on that proposition and finds that Mr. Tinkham did expend more than he was entitled to expend under the Massachusetts law, what do you contend would be the result? Should this committee contend Mr. Tinkham was not elected and put Mr. Horgan in Mr. Tinkham's seat, or just declare the seat vacated? That is, assuming——

Mr. PROUT (interposing). That is for the committee to say. It depends. I imagine, upon the nature and the extent of the proof and as to how the committee views the evidence. If the committee find, or if in the minds of the committee there was a violation of the law, of course, that point is different from the other points.

Mr. RAMSEYER. In order to make it clear, assume that the committee finds against you in relation to everything except the matter of returns.

Mr. PROUT. In that case the committee would not be justified in seating the contestant.

Mr. RAMSEYER. But would be justified—

Mr. PROUT (interposing). In unseating the contestee. On the other points—

Mr. RAMSEYER (interposing). I understand your position on the other points.

Mr. PROUT. I would like to include in my statement this other tabulation in regard to the votes for the various other offices in the district on that election day.

The table referred to is as follows:

Ward.	Governor, Walsh.	Lieutenant governor, Barry.	Congress, Horgan.	Senate, Democrats.	House, average, Democrats.	Governor, McCall.	Lieutenant governor, Cushing.	Congress, Tinkham.	Senate, Republicans.	House, average, Republicans.
10.....	922	795	724	731	631	1,417	1,545	1,601	1,445	1,400
11.....	466	359	368	393	338	1,628	1,714	1,643	1,607	1,549
12.....	1,304	1,177	1,066	1,157	1,175	907	1,011	1,148	1,092	814
18.....	1,256	1,149	920	1,338	1,062	655	666	934	546	621
19.....	3,031	2,852	2,641	3,225	2,644	486	565	928	380	472
21.....	2,292	2,007	1,792	2,024	1,829	2,028	2,201	2,411	2,146	2,080
22.....	2,562	2,333	1,951	2,585	2,073	1,412	1,559	1,972	1,371	1,923
23.....	2,817	2,552	2,401	2,586	2,590	2,435	2,631	2,873	2,844	2,264
Total....	14,650	13,224	11,863	14,049	12,342	10,968	11,892	13,510	11,431	11,123

¹ Democratic Senate: includes regular Democrat and independent Democrat.

Mr. PROUT. Mr. Tillman inquired yesterday as to the size of the colored vote in ward 18. It is in evidence that the total vote in the ward is 3,084, and the contestee, Mr. Tinkham, testified there were between 700 and 800 colored voters in the ward. He testified to that on page 493 of the record, and the contestant testified on page 554 of the record that in his opinion there are about 250 colored voters in the district. It is not in evidence, but that figure of 250 was too low. As a matter of fact, there are in the vicinity of 400 colored voters in the district.

The only other point to be touched upon I will touch on very briefly. That is, the allegation of the contestee that the contestant was a very weak candidate, and for various other reasons he was defeated.

In the first place, the circular of the contestant sums up his qualifications for the office of Congressman. He had had many years of legislative experience, had just completed a term of three years in the Massachusetts Senate, having been elected as a Democrat from a strong Republican district, had practically the united support of all the labor unions in the district, as is shown by reference to the records from pages 534 to 550.

He had the indorsement of the State branch of the American Federation of Labor, and the indorsement of various other local unions. In addition to that he had the support of the Democratic governor and the Democratic State treasurer and the Democratic State auditor, and the Congressmen in that district, including Congressman Gallivan and Congressman Tague.

Mr. INNES. There is no evidence of that.

Mr. PROUT. Yes, there is, and various other supporters are referred to on page 376 of the record. There is also a letter from Mayor

Curley of Boston, on page 381 of the record. There are also indorsements of labor unions found on pages 374 and 375 of the record, and also on page 376 and in the exhibit comprising largely letters from legislative agents of the union on pages 414 to 462 of the record.

The point also was made by the contestee that the two men who opposed the contestant in the primaries confessed the fact that they did not injure him in the campaign. There is no evidence that that was any more than usually follows such a case. As a matter of fact, there is evidence that both of these men were with the contestant and supported him on the stump up to and including a week or 10 days before the election.

MR. ROGERS. Is Mr. Horgan's senatorial district included wholly within the congressional district?

MR. PROUT. One ward is in the district and one is not.

MR. ROGERS. Can you give us the wards included in the former senatorial district?

MR. PROUT. The former senatorial district consisted of wards 23 and 24. Ward 23 is in the congressional district, and 24 is in Mr. Gallivan's district.

MR. RAMSEYER. Does Mr. Horgan live in ward 23?

MR. PROUT. Yes. The only other point I would ask the members of committee to consider is in determining whether Mr. Horgan is a weak candidate in addition to his legislative experience and record and the support of the various leaders of the Democratic Party in the State as well as in his district, with the exception of the few men referred to—he is here; you can look him over. He looks like a pretty able, intelligent man, and certainly the voters in the district would not be prejudiced against him on account of his personal appearance or his handling of the Queen's English.

MR. TILLMAN. Was Walsh a popular Democrat and a popular governor?

MR. PROUT. He was a very popular Democrat.

MR. TILLMAN. Did he poll his full party vote in this last election?

MR. PROUT. Yes, sir; he did.

MR. TILLMAN. Was McCall a popular Republican; a strong, clean man?

MR. PROUT. McCall is the present governor of Massachusetts, who, since he has been elected, has been mentioned frequently as a candidate for the Republican nomination for the Presidency, and, according to the testimony of the contestee in his brief, he says that Samuel W. McCall is one of our best known and most highly respected men in public life.

MR. TILLMAN. I will ask you if Mr. McCall did not serve in Congress?

MR. PROUT. He served 12 or 14 years in Congress.

MR. TILLMAN. I see that Mr. Tinkham got bigger votes than Mr. McCall out of all the wards in this district.

MR. PROUT. That is due, in a great measure, to the popularity of the Democratic candidate for governor. You will also note that a comparison of Mr. Tinkham's votes and Mr. McCall's votes shows that the vote is closer in Tinkham's own ward than in any other.

MR. TILLMAN. In the tenth ward McCall received 1,417 votes and Tinkham 1,601. Mr. Tinkham got a larger vote than McCall in that ward.

Mr. PROUT. That is a machine ward.

Mr. TILLMAN. I noticed in the eleventh ward Mr. McCall received 1,628 votes and Tinkham 1,643 votes. You will notice that Tinkham got a larger vote there than McCall got. Then in the twelfth ward McCall received 907 votes and Tinkham 1,148 votes. Then you will notice that in the eighteenth ward McCall got 655 votes, while Tinkham received 934, and in the nineteenth ward McCall received 486 votes, while Tinkham received 928, and the twenty-first ward McCall received 2,028 votes and Tinkham received 2,411 votes. In the twenty-second ward McCall received 1,412 votes and Tinkham received 1,972 votes, while in the last ward, the twenty-third ward, McCall received 2,435 votes and Tinkham received 2,873. You will observe that in every ward Mr. Tinkham received a larger vote than Mr. McCall. Then in the total vote of that district McCall received 10,968 votes, while Tinkham received 13,510.

Mr. MAGEE. Where does Mr. Walsh live?

Mr. PROUT. In Fitchburg.

Mr. MAGEE. He was a very popular candidate?

Mr. PROUT. With the Democrats; yes.

Mr. MAGEE. And with the independent citizens, too.

Mr. PROUT. At his first election he was elected by 50,000 or 60,000 majority. He was only defeated at the last election by about 84.

Mr. MAGEE. How many terms was Walsh elected governor?

Mr. PROUT. He was elected lieutenant governor twice and was elected governor twice and was defeated for a third term as governor.

Mr. OGLESBY. In reading over your brief, Mr. Prout, I was very much interested in noting Mr. Timilty seemed to be a man of parts and a man of influence; and if the statements made in your brief are warranted by the fact, he was quite influential in determining this election, as he worked to the disadvantage of the Democratic Party. I believe, too, he holds an important position in the Democratic organization.

Mr. PROUT. He was president of it.

Mr. OGLESBY. Has he a position there now?

Mr. PROUT. He is the present State senator from that district. He represents his own ward as head of the ward committee, but he has been removed as head of the city committee.

Mr. OGLESBY. Has any action been taken to discipline Senator Timilty for his treachery to the party in this campaign?

Mr. PROUT. The only things you could show as evidences of an attempt to discipline him is the fact that in the last election, in the primary campaign, there were 50 per cent more votes cast for other candidates than for Mr. Timilty. There were two other candidates, and because he succeeded in dividing the opposition he was able, with the support of his own ward, to obtain the Democratic nomination, which is equivalent to election.

Mr. OGLESBY. Has not your Democratic organization in Massachusetts, or in Boston, a clause under the law, or under rules of its own constitution, for disciplining the members of your organization who have proven unworthy of their associates?

Mr. PROUT. The only way that could be brought about would be by the failure to reelect them to whatever offices they hold in the city

committee, which is made up of the chairmen of the ward committees, and the ward committees are elected by the people; and in view of the fact that Mr. Timilty dominates his own ward, he has had no difficulty in that regard.

Mr. INNES. They removed four men recently.

Mr. OGLESBY. We have a provision in New York whereby members are disciplined for any failure to properly represent the interests of the party. In fact, it is now in the statute law. Formerly it was done under the rules and regulations adopted by the organization. What I was trying to find out was whether you have such a provision in the law of Massachusetts or in the regulations of your party organization.

Mr. PROUT. There is no such provision whatsoever, and the only thing that we have to take its place is the custom of certain self-constituted persons of reading certain individuals out of the party. That is not official in any way; it is not recognized by the organization and it is not in the statute law.

Mr. OGLESBY. There is no evidence whatever as to the fund of \$12,000 of Mr. Tinkham other than a newspaper story?

Mr. PROUT. That and a testimonial of witnesses as to rumors. There is no direct, specific evidence on that point in regard to that amount or any amount.

Mr. OGLESBY. Do you think there is enough evidence in the record on that subject to warrant you in asking this committee to seriously consider that as one of the charges?

Mr. PROUT. In view of all the evidence that is in tending to show a conspiracy and the character of Mr. Timilty, as testified to by various witnesses, and the fact that he did actually support Tinkham with no reason, as appears from the evidence and from his perjury on that point, and his desperate attempts to conceal evidence tending to show that he did support Tinkham, all that leads to the inevitable conclusion that there was something he was concealing and wanted to conceal.

Mr. OGLESBY. Then you contend that the support of Mr. Timilty by itself was evidence of wrongdoing on the part of Mr. Tinkham, do you?

Mr. PROUT. No, sir.

Mr. MAGEE. What is the business of Senator Timilty?

Mr. PROUT. He is a city paving contractor. Yesterday morning's Boston Herald objected to his sole vocation as a paving contractor, and at the present time there is a great deal of agitation in Boston concerning his business as a paving contractor and the amount of money he gets from the city and the amount of money he charges the city for doing that work.

Mr. MAGEE. Is he a man of means? Has he money credit?

Mr. PROUT. He is referred to as "Diamond Jim" Timilty.

Mr. MAGEE. What I was asking is whether he has money credit.

Mr. PROUT. The only money credit he has is the money he made himself in his business as a paving contractor.

Mr. TILLMAN. Has he got a great deal of money?

Mr. PROUT. The rumor is that he has. That is all I have to present at this time, Mr. Chairman.

ARGUMENT OF CHARLES H. INNES, ESQ., ON BEHALF OF THE CONTESTEE.

Mr. INNES. Mr. Chairman, I am going to be as short as I can, but at the outset I want to emphasize something you may consider as perhaps not fully proper but which I think important in this case. I want to emphasize the fact that every statement of fact in our brief is contained in the evidence; that no conclusion has been drawn in our brief that is not supported by the evidence; and that no conclusion has been drawn that is not justified by the record. We have not given any sweeping statements of what the witnesses testified, but the testimony itself is quoted. And the best evidence of that is the fact that—and I spent a great deal of time on it, because it was important from our standpoint to have these rumors, at least, shown not to have any foundation—in the contestant's reply brief there is no correction or even a suggestion that we have been at all unfair in any way in the conclusions we have drawn in our brief, with the one exception where Mr. Prout says we should have stated the hotels sold liquor on election days. We did not state it. I quoted the law. That is the only criticism he has to make of that brief.

Now, our brief is filled with references where the evidence has been absolutely misstated by Brother Prout, where he has quoted evidence which does not exist, where he has referred to a witness's testimony who never testified at all in accordance with the way the brief says he did. And that again is reiterated in this last brief.

It is unpleasant to speak of these misstatements, but I think it is part of my duty to do so. The first statement in this brief in reply, at which I am astonished, is on page 11. He says the witness testified that, in conversation with Mr. Duffin, an associate in the law office of contestee, this man boasted to him that contestee had illegally spent large sums of money in the congressional contest, and also stated that they knew contestant could not prove it. He also says in his brief that the testimony of this reliable witness is unequivocal and has not been denied by contestee's law associate, Mr. Duffin.

Mr. Duffin's examination took but a page of the record. It was all conducted by Brother Prout himself; we had not the faintest idea at this time that there was going to be any suggestion made that Mr. Duffin had talked about anything because he was simply employed in Mr. Tinkham's office. We did not know of the alleged conversation in this brief, but here is the alleged testimony, page 165:

Q. You have not the slightest idea, then, as to how much money his campaign cost him?—A. Oh, no; haven't any idea at all.

Q. If you were to make a guess at it, what would you say?

Mr. INNES. Wait.

The WITNESS. It would be impossible for me to make a guess.

Q. You haven't any information on which you could make an estimate—A. None at all.

Q. Did you ever say to anybody that it cost him a barrel of money?—A. Oh, no.

Mr. INNES. I enter a formal objection, because it may be that Mr. Horgan's may have cost \$1,000,000, so far as I know. So I have got to object to save our rights.

Q. Did you ever tell anybody that Tinkham spent money on the election that he didn't make any return for?—A. No.

Q. You are quite certain of that?—A. Very sure.

Q. Did you make any statement that could be construed into that?—A. Never.

Q. Did you make any statement that Tinkham spent more money than the law allowed, but that the other side couldn't prove it?—A. Oh, no.

Now, I want to know if there can be a more definite refutation of this campaign manager's statements of this source of information of the club he and Duffin were members of—any more positive refutation of that charge than Mr. Duffin's own testimony, brought out on the examination of Mr. Prout? That is the first case.

The second case in this little brief of 11 pages——

The CHAIRMAN. There is not any doubt, though, that McLaughlin testified to that?

Mr. INNES. There is no doubt that McLaughlin testified that was so.

The CHAIRMAN. McLaughlin said a certain thing, and this is Duffin's denial?

Mr. INNES. Duffin was called first. And they called all of these people first, and it was all their evidence, and they called for him and asked him first. I should have asked Duffin, "Did you talk to McLaughlin?" but I had not the faintest idea, and he asked the question himself, and Duffin denied it as specifically and unequivocally as he possibly could.

Coming to the second proposition. I want to call your attention to this, because here is another illustration I find in their brief, and that is the letter of Andrew J. Peters, which does not appear at all in the record and which is dated nine months after this evidence was taken.

The CHAIRMAN. On this matter, Mr. Innes, I want to get this. I do not see anything wrong in their telling us, and if so, I want to know that McLaughlin so testified.

Mr. INNES. I agree with you.

The CHAIRMAN. Of course, we are to consider the question of veracity and credibility as between the two witnesses.

Mr. INNES. May I interrupt? There is the other question, Mr. Chairman, that we have no evidence, except that Mr. Duffin said to Mr. McLaughlin that Tinkham had done that. And even that is no positive evidence, if he did say so, because he had no connection with Tinkham's campaign. He was a Democrat.

The CHAIRMAN. There is no doubt McLaughlin said Duffin told him Tinkham had spent a lot of money.

Mr. INNES. Exactly.

Mr. TILLMAN. What page is that of McLaughlin's testimony?

Mr. PROUT. Pages 250 to 254.

Mr. INNES. Mr. McLaughlin did testify to that. I make no complaint about that, but I do make complaint about the statement in the brief that Duffin never denied that McLaughlin had that conversation with him. That is my complaint.

Mr. MAGEE. You mean Duffin denied he had such a conversation?

Mr. INNES. Duffin denied it; he denied it specifically, the question being asked again and again, to which he replied "No," and then the contestee's brief states he never denied it. This is an express conversation about a man he worked for having spent thousands of dollars, but nobody could prove it.

Mr. OGLESBY. McLaughlin's testimony of the statement to him?

Mr. INNES. McLaughlin's testimony of the statement to him. The second case I want to make is Mr. Peters's testimony. They have offered here on page five a letter from Peters, dated October 22, 1915. I do not know whether he wrote it, but I will assume he did. We had never seen it, and never had the chance to examine him about it; but here it is; it appears in the supplemental brief.

Mr. RAMSEYER. Who is this Peters?

Mr. INNES. Andrew J. Peters, who was for eight years a Representative of that district in Congress, and is now Assistant Secretary of the United States Treasury.

Mr. RAMSEYER. Tinkham's predecessor?

Mr. INNES. He was Tinkham's predecessor.

The CHAIRMAN. Is this letter in the record?

Mr. INNES. It is not, sir.

The CHAIRMAN. You mean this brief is made up of letters not in the record?

Mr. INNES. It is. There are many letters in this brief. It is in the supplemental brief, the last brief filed. Now, that letter, which I want to read because you can see what it says, and I want to explain why the letter became important, apparently, to have in this case. Here is this very fine circular we have, delightful and familiar. The second thing which stands out in that statement is what Andrew J. Peters, former Congressman and now Assistant United States Secretary of the Treasury, says of Senator Francis J. Horgan:

Senator Horgan's brilliant record for the past three years in the statehouse should commend itself to all the citizens of the eleventh congressional district and result in his triumphant election on November 3.

That was important to have on that circular. It was important for this reason: Mr. Andrew J. Peters was a very prominent Democrat in our State. He was one of the men Mr. Timilty and Senator Doyle and some of the other men whose names have been brought into this before, were classed as friendly with. He did not announce his retirement from Congress until after Mr. Horgan had announced his entrance into the field. That is a fact, shown by the record. Mr. Horgan announced his candidacy against Peters in July as a candidate for Congress in his place. Mr. Peters did not announce his withdrawal until some time later. And at that time everybody assumed that Mr. Peters was then considering the question of whether he would run, and led everybody to think so, so that Mr. Peters's friends were confronted in July with the statement that Mr. Horgan had entered the fight as a candidate for Congress in that district.

Mr. MAGEE. How long had Mr. Peters been in Congress?

Mr. INNES. Eight years; always having a large majority. Mr. Timilty (and this is Mr. Horgan's testimony) had talked over with Mr. Horgan the question of running himself for Congress. That is Horgan's testimony. He withdrew and ran for the Senate. Mr. Peters's friends supposed that Mr. Peters was going back at that time. In any event, he had made no decision.

Now, gentlemen, I do not think Mr. Peters was opposed to Mr. Horgan, but I do say this: If you are looking for reasons why Mr. Horgan did not run well, a great many of Mr. Peters's friends naturally resented his candidacy at that time. That was the reason for

that statement. Now, Mr. Peters wrote a letter, which is in the record. That was sent by Mr. Peters to me, and his letter is here, page 17 of our brief, in which he says:

MY DEAR MR. INNES: Your favor of March 4 is at hand. I have not seen the circular of Mr. Horgan's you refer to as being used in the congressional campaign. Last fall I made several speeches in connection with the campaign for various Democratic candidates and spoke for the Democratic ticket in the eleventh congressional district, and Monday night before election. I did not, however, issue or authorize any statement in connection with any candidate.

I pressed Mr. Horgan to tell us where he got that quoted statement. I pressed him also to know where the signatures which adorn the back page of this circular were obtained, and I asked the men whose names appear here (except Brother Prout, who was a lawyer in the case, and, of course, I did not ask him) where those signatures were obtained, and where the indorsement of Mr. Peters came from. Mr. Horgan's testimony on this subject was to the effect, and it is found on page 555 of the record, beginning near the bottom:

Q. Senator, have you the letters from Mr. Peters commending your candidacy?—A. I haven't got them with me.

Q. Have you any letters from Mr. Peters in reference to supporting you?—A. I received several letters from him.

Q. I call your attention to the fact that I asked you to bring them here.—A. When did you ask me?

Q. I have asked you on two or three occasions. I have asked Mr. Prout once or twice, and I have asked you once or twice.—A. Have you served notice on either myself or Mr. Prout?

Q. I asked Mr. Prout at a hearing to produce them, and asked you to look to see if you had them, and you said that you had them and would produce them.—A. You have not asked me since I was on the witness stand.

Q. You were here in court at the taking of depositions yesterday, when I asked Mr. Reddish about it. You heard his testimony about letters from Mr. Peters, did you?—A. I do not rememehr that part of his evidence. I was in the court room. I may not have been paying attention to him.

Q. Do you remember my asking Mr. Reddish if he had seen any letters from Mr. Peters to you?—A. I may have.

Q. You have not got them here now?—A. No.

Q. Have you them on file?—A. I have them at home.

Q. Favoring your candidacy?—A. Letters in reply to communications from me asking him to write to different individuals.

Q. Indicating his friendship to you?—A. Absolutely.

Q. And his willingness to help you?—A. Absolutely.

Q. Will you keep those until we go to Washington?—A. I certainly will produce them in Washington at the proper place.

Q. You haven't thought it necessary to produce them here?—A. I consider them properly presentable before the committee at Washington.

Q. That is why you did not produce them here?—A. That is the reason.

So there is the reason. The introduction of this letter, dated long after that inquiry, not at all in answer to what I wanted to have, which I submit conclusively establishes, that a misrepresentation is contained in that circular and which may account for the reason why these circulars did not go out, as he says—why they stopped sending them out. I do not know, but it may account for it.

I want to speak of one other thing in that brief, because I have not referred to it in my brief.

Mr. OGLESBY. Let me ask you right there: I do not think that has any bearing on why those circulars were not sent out, as I read it over, but what bearing can that have on this case except possibly to explain why Mr. Horgan was behind the ticket?

Mr. INNES. That is what it is strictly admissible on, I think:

Mr. OGLESBY. This examination and this occurrence after the election is not important. Do you claim that the publication of that statement, purporting to come from Mr. Peters, was an affront to his friends, and was one of the causes which made them refuse to vote for Mr. Horgan?

Mr. INNES. The publication of that statement has perhaps placed the right atmosphere about this entire contest. I consider that it was one of the most daring things I have seen done in politics.

Mr. OGLESBY. But my question is as to the effect on the election?

Mr. INNES. I think that is going to reproduce to your mind—I am not speaking of Mr. Horgan personally, but just the character of man he is, and the character of his friends, as to why they did not support him when it came to election. That is what I mean.

The CHAIRMAN. Suppose that statement is false, and it certainly was audacious, if it was not false, if Mr. Peters did not deny it during the election, or if it was not known he had not authorized it; in other words, as long as the people thought it was genuine, does it not go to show, then, as far as the people were concerned, that Peters was behind this man; and does it not therefore have a tendency to show that any votes he lost were due to that conspiracy he claims that Timilty entered into against him? In other words, if that statement came out during the campaign, and if people believed it was Peters's statement, then Peters's friends did not cut him, for Peters was with him.

Mr. INNES. Unless they believed the other statement, Mr. Chairman, was untrue.

The CHAIRMAN. But, if he was not cut by Peters's friends, in resentment, the conclusion is that it was Timilty's friends who cut him, and to prevent his election Timilty entered into a conspiracy against him, and had his friends vote against him.

Mr. INNES. Unless many of his friends did not believe it.

The CHAIRMAN. Am I clear in the point I am stating?

Mr. INNES. I think that is a fair conclusion.

Mr. OGLESBY. Do I understand the chairman to imply—

The CHAIRMAN. Do you see what I mean there, Mr. Tillman?

Mr. TILLMAN. Yes; I see your point.

Mr. OGLESBY. Do I understand the chairman to imply that the senator's failure to support a Democratic nominee in any way tended to establish a conspiracy that was not shown by other evidence of value?

The CHAIRMAN. Oh, no; it is just as to the question of whether Timilty did cut Horgan.

Mr. INNES. I think that argument is perfectly fair.

The CHAIRMAN. You see my point?

Mr. INNES. I think it is a perfectly fair conclusion to draw. But I was only offering it at this time, Mr. Chairman, for the purpose of emphasizing and bringing out the unreliability of the character of the brief. I do not think you ought to accept the sweeping statements unless you find them verified by the record.

The CHAIRMAN. You are pointing this out as a prominent instance?

Mr. INNES. That is all I offer it for at the present time.

The CHAIRMAN. I see.

Mr. ROGERS. I notice on that green Horgan circular in the record the name of Senator Timilty appears as one of the advocates of Mr. Horgan. Is there any evidence in the record to show that the inclusion of his signature was authorized by him?

Mr. INNES. I do not think there is any evidence anybody ever signed that circular. I do not mean to say they did not; they may have all authorized it. I simply tried to find out who collected the names, and I asked the manager if he did, and he said "No."

Mr. ROGERS. Timilty being one of those in the limelight, I was asking if his authorization had been made a matter of proof.

Mr. INNES. I do not think they asked him, and I had not any idea of it when he was on the stand. I think he was one of the first witnesses, and I had never seen this circular at that time.

Mr. MAGEE. Did not Timilty deny his signature was genuine?

Mr. INNES. I never asked him.

Mr. TILLMAN. Was that circular sent out?

Mr. INNES. Fifteen thousand were sent out and 7,000 were suppressed, they say. And may I say about that suppression the man who he says suppressed this circular was then the secretary of the city committee, not Timilty's secretary, and why he did not send this out, if he did not send it out, we have no idea and do not know. I never talked to him. Perhaps he did not get paid enough money; I do not know. I do not know that he did not send it out.

Mr. OGLESBY. It is entirely consistent with the theory of conspiracy if it existed?

Mr. INNES. It is consistent, the same as almost anything is consistent with conspiracy, if there is any evidence to connect us with it, by Senator Horgan or anybody else.

Mr. MAGEE. You say Senator Horgan announced his candidacy in July? What was the position of Congressman Peters at that time as to running again?

Mr. INNES. Congressman Peters had made no announcement. He had been talked to by several people and said he was undecided what he was going to do, and he so remained until August, three weeks later, when he published his statement he would retire. But everybody knew he would not enter a contest in the primaries.

Now, the third point—and I am going to speak of this as the last point. He speaks about Timilty having been eliminated by unanimous vote as president of the Democratic city committee and that committee has done what it could to punish one wrongdoer. There is not a particle of evidence furnished either that Mr. Timilty was eliminated or by a unanimous vote. Now, I hold no brief for Senator Timilty in this matter. He is not represented at all in this contest any more than any other Democrat of prominence, but I simply state that he belongs to the opposite faction from Brother Horgan. And what the evidence does disclose is that Mr. Timilty was re-elected to the senate; after all these newspapers charges he was put at the head of the Democratic city committee—after all these newspaper charges and after this election. If you want to know the real facts, last year they had a new head, as they have every year, and Timilty said he did not care to go back.

Mr. PROUT. That is absolutely wrong.

Mr. INNES. Let it rest. There is no evidence of it; and, if I make a statement of it, I want to say it is merely my statement and not in the record.

Mr. OGLESBY. Would not his action in deserting his own party and supporting a man of the opposite party be just as deserving, from a party standpoint, of punishment by removing him from a position of trust in the party—to have done it as a matter of friendship—as if it were done as the result of a corrupt bargain? In either event he was unworthy and ought to be replaced by somebody whom the party could depend on.

Mr. INNES. I would prefer not to answer that question, simply because Mr. Timilty is not of my party, and I do not want it to get in the papers that I suggested I thought he had been with Tinkham or that he ought to be removed if he was.

Mr. OGLESBY. I mean from a party standpoint. All of us try to get votes from the opposite party, and nobody for a minute would consider that such a conspiracy was the result of anything wrong. On the contrary, we would be inclined to contend that it showed good citizenship if a man were to leave his own party to vote for a man in the opposite party because he thought he would get somebody elected who would better represent the people. But I say, from the party's standpoint, desertion for any cause is considered party perfidy, is it not?

Mr. INNES. I should prefer not to give you my opinion, which does not seem to me is quite a part of the case. I would be perfectly willing to give it to you personally.

Mr. RAMSEYER. Mr. Oglesby is simply getting at the abstract proposition.

Mr. OGLESBY. I want to find out whether or not this desertion might not be entirely consistent with what is legally permitted and still would warrant and require punishment by the party.

Mr. INNES. Oh, absolutely.

Mr. OGLESBY. Because he occupied a position of trust in the party.

Mr. INNES. I misunderstood your question. I thought you wanted to know whether he ought to be removed.

The CHAIRMAN. What would be the legal effect?

Mr. INNES. Of Timilty deserting?

The CHAIRMAN. Of Timilty turning over to the Republicans?

Mr. INNES. I do not think it has any legal effect.

The CHAIRMAN. I want to hear you on that. You heard what Mr. Prout said.

Mr. INNES. I think Mr. Prout stated there is no punishment can be invoked, criminally or otherwise, except the party may see fit to exercise its discipline. I know of no other punishment.

Mr. OGLESBY. Except it is done as a result of a corrupt bargain?

Mr. INNES. It would not be the result of a corrupt bargain unless it was done as the result of an unlawful conspiracy. If that conspiracy had as its end something lawful—

Mr. RUSSELL. Do you concede that Mr. Peters deserted the Democratic Congressman?

Mr. INNES. No.

Mr. RUSSELL. You do not concede he supported Mr. Tinkham?

Mr. INNES. I do not. It is manifest that many of his followers did. Going into the realm of speculative politics, I have found that

very often a man can stick to a party and let his friends go. I do not know whether Timilty did that or not, but it very often happens, possibly Timilty did that.

The CHAIRMAN. I can understand Timilty doing that, and we all know it has been done, that he would get his friends to defeat a party candidate, but would keep his own skirts clean, as far as he could, and vote the straight ticket himself, so that in the future he could always have the record of having been a perfectly regular party man, and could never be accused of having cut the ticket.

Mr. OGLESBY. I do not want to be put in the category of those who could understand that. Of course, politics in New Jersey are a little different from politics I have been used to; but I could not understand that.

Mr. ROGERS. Do you consider it consistent with the weight of the evidence that Mr. Timilty simply kept his hands off?

Mr. INNES. My own personal view is that Mr. Timilty did not do anything that he might have done to straighten out things for Mr. Horgan. And I think lots of other men in the Democratic Party did exactly that same thing. I think many of them thought they were within their political rights in doing so. I am not clear they were not. I have seen enough elections——

Mr. OGLESBY. You differentiate between a man who is simply a party man, and the man who occupies a position of trust, as president, or secretary, or some other official position of the organization?

Mr. INNES. Oh, I think so. I think the other man has a right to go out on the street corners against any candidate he wants to; I think he has a perfect right to do that.

Mr. OGLESBY. But if the other man is honest, and can not support the ticket, he should resign any official position, should he not?

Mr. INNES. Personally, I did once, when I had a partner running for governor on the Democratic ticket; I thought it the proper thing to do; not that I did not want to vote for him, but I did not want to be in a position of supporting the other man. I think that is the position to take.

Mr. RAMSEYER. It has been suggested at times Senator Horgan and Senator Timilty belong to different factions. Were there two factions, and those two men belonged to separate factions?

Mr. INNES. There is a line of demarcation in Boston politics which you can almost always tell. This crowd is here, and that crowd is there. Once in a while they shift around.

Mr. RAMSEYER. You mean in the same party?

Mr. INNES. In the same party. They used to have a line-up for local offices at one time.

The CHAIRMAN. The two factions?

Mr. INNES. The two factions.

The CHAIRMAN. And fight bitterly in the primaries?

Mr. INNES. And fight bitterly in the primaries.

The CHAIRMAN. The Timilty Democrats and the Horgan Democrats?

Mr. INNES. Yes.

Mr. ROGERS. Is there any evidence as to who Timilty supported in 1914?

Mr. INNES. I do not know, except what the record shows. The record shows Horgan got about 4,400 votes, and Fay, who was in

Mr. Timilty's ward, received 3,600, and Watson, who is also from the same ward, received over 3,100.

Mr. ROGERS. Are both Fay and Watson affiliated with Senator Timilty's organization?

Mr. INNES. They used to oppose it, but for the last two or three years have supported Timilty's organization. We are getting now into the realm of Democratic politics. I think Mr. Fay was an opponent of Timilty's for some years, and ran against him in the Senate, and also at one time was supported by him for the House. Then they had some trouble, and whether they came back together I do not know. But, at any rate, those three candidates ran at the time Mr. Horgan ran.

I am only mentioning those three things to emphasize what I think you might consider unfair on our part. Then I believe our brief does not contain anything untrue and unjustified, as I know their brief does, and I think that has been reiterated in this brief here, which is filed in rebuttal.

I want to come directly to two things said here, and that is the questions asked by Congressman Tillman; that is, about the liquor, the dispensation of liquor, and the corrupt use of money. Now, there is not any evidence that Tinkham even bought a single drink for any man during that campaign.

The CHAIRMAN. Did any of his agents?

Mr. INNES. There is not any evidence that any of his agents bought any liquor for any man during that campaign.

Mr. OGLESBY. How did Horgan get licked?

Mr. INNES. Read his campaign textbook, Mr. Oglesby.

The CHAIRMAN. It was stated that liquor was used?

Mr. INNES. Mr. Chairman, that is absolutely denied. And Mr. Tinkham was asked that specific question, and I would like to tell you what he said.

The CHAIRMAN. You need not quote it.

Mr. INNES. He said, "I have no objection to going into a hotel barroom, but from the time I was nominated I never entered a place where liquor was sold, except a club."

The CHAIRMAN. That is all right—

Mr. INNES. From the time I was nominated for that office.

The CHAIRMAN. That is all right, so far as Mr. Tinkham was concerned; but is it a notorious fact that liquor was used quite generally on that day, more so than on the other days?

Mr. INNES. Mr. Chairman, there is not a particle of evidence that liquor was used at any time during the entire campaign, except John Craven, Mr. Timilty's brother-in-law, they say took some kind of a drink at one of these hotels. But Mr. Timilty was a candidate for the senate himself at that time. They say he took three or four men there in an automobile; Mr. Timilty was running for the senate. He had a hard fight on with one of the Democrats, one of the principal witnesses in this case, to show the character of Mr. Timilty, who was running against him for the senate. He had his own fight on his hands.

The CHAIRMAN. What is there to support the statement these small flasks of whisky being handed out?

Mr. INNES. There was the statement made here, and it is in the brief of Brother Prout, that small flasks of whisky were given out.

I want to read the testimony in that case, and this man who testifies is the type of derelict of which many were summoned to testify. I want you to listen to his testimony; and when I say he is a typical derelict and hanger-on, I am going to prove it by his own statement.

The CHAIRMAN. Is he the only man who testifies to these vials of liquor?

Mr. INNES. He is the only man who testifies to anything—

The CHAIRMAN. In the way of liquor?

Mr. INNES. In the way of liquor.

The CHAIRMAN. Is there only the one witness, this man whose testimony you are going to read? Is he the only witness who says anything throughout the whole record about the use of liquor?

Mr. INNES. Absolutely the only man.

The CHAIRMAN. And you are going to tell us what he did say?

Mr. INNES. My Brother Horgan says that is not so, and I am going to say this to you, that there is lots of evidence here to this effect: "Did you hear rumors that liquor was being dispensed?" "I did." "Where did you hear that?" "Around the street corners."

The CHAIRMAN. I see.

Mr. INNES. There is lots of that sort of evidence, but nothing which would be considered in any court, nothing that is fastened to any particular person.

The CHAIRMAN. Nobody except this man says they saw a man drinking liquor or a man handing out those flasks of liquor?

Mr. INNES. There is not any evidence except it is testified a man named Lane bought a drink for two or three men. Senator Lane had been in the senate for two or three years and ran for Congress.

The CHAIRMAN. How many men did he treat?

Mr. INNES. He had three or four men. He was asked about this himself, and he said he stopped off there and met some men in the hotel bar, and he was asked how much it was, and he said 25 or 30 cents, maybe 40 cents. That is all there was.

The CHAIRMAN. There was not any taking in of a whole crowd of voters—

Mr. INNES. Mr. Chairman, there is not a line of evidence—

The CHAIRMAN (continuing). And treating them at the bar?

Mr. INNES. Nothing of that sort at all. Now, in the Keyes testimony—Keyes is the man produced to show Tinkham's bribery—record 338—

The CHAIRMAN. And you are on this liquor business?

Mr. INNES. I am on the liquor question.

Mr. RAMSEYER. You are reading from your brief?

Mr. INNES. From my brief, page 73; record, page 338. He was asked:

Q. Well, with whom did you first get into communication in the campaign?—

A. Well, somebody sent me down to Mr. Tinkham's office, telling me that there was going to be a barrel of money distributed, and I thought I would get a little bit of it, and I went down there, and I saw Mr. Tinkham, and he told me that he thought it wasn't hardly fair in a way; that he could not put out money directly now, but to go down to Mr. Savage, over in the Globe Building, and he would give me the money. I went to Mr. Savage, and Mr. Savage told me they were all out of funds, and to go up—that he had spent all he had to spend.

Mr. Savage was chairman of the twelfth ward committee. Later, after going to Mr. Savage, and being informed he had no money to

spend, he went then to a member of the legislature or a candidate for the legislature, named McGregor, and he said McGregor gave him some flasks of whisky and told him, I think, he would give him three or four dollars, I think, for working election day at the polls. He then goes on to say he intended to take McGregor's money and not to vote for him. I asked him that question, and he said, "Sure, the same as they take it from us all." He said that he received a card for use at the polls with a lot of names on it, which apparently was the whole Republican ticket. Record, page 340. Then he goes on:

Q. Do you mean the whole ticket or the whole ballot of the Republican candidates?—A. The whole ballot, I presume.

Q. You looked at the card?—A. I did.

Q. Was the name of Gov. Walsh on the card or the name of Mr. McCall?—A. I can't say.

Q. Was the name of Mr. Barry or Mr. Cushing on the Card?—A. I don't know, because I didn't take any more stock in it than I do in this whole shooting match, because I didn't want to be brought into it.

* * * * *

Q. Did you ask anybody to vote for anybody on that day?—A. I certainly did.

Q. Who did you ask to vote?—A. I think Dr. Walsh was a candidate, wasn't he?

Q. Did you ask them to vote for Dr. Walsh?—A. Yes; and I would go again, and wear my toe nails off for him.

Dr. Walsh was not a candidate that day, having been defeated in the primary election by Senator Leonard. Then Keyes finally says that Mr. McGregor and not the contestee employed him.

A. I could not work other than I was employed by Mr. McGregor. That is the only one that employed me.

This McGregor was a candidate for the legislature. Certainly that statement can not be laid up to us in any way, shape, or manner. Mr. Tinkham testified he did not even know Keyes, did not remember his having come to the office, and never has met Mr. McGregor in his life. The following remarks are rather interesting and illuminating, indicating the whole character of the man:

Mr. PROUT. Did Mr. Innes give you any money that day?

The WITNESS. No, sir; because he did not wait long enough for me to touch him.

Mr. RAMSEYER. The Mr. Innes referred to there. Is that the gentleman speaking now?

Mr. INNES. I was the gentleman referred to. On election day I went around in some of the precincts, and the testimony of this Keyes is that he saw me, and then Mr. Prout said, "Did Mr. Innes give you any money that day?" And he said, "No, sir; because he did not wait long enough for me to touch him."

I merely put that in to show the character of the witness. Now, we certainly can not be blamed for Keyes. Then, let us take the other case they mention, and that is the only case of liquor in this campaign, and yet it is characterized as the lavish use of liquor.

The CHAIRMAN. He says there were half a dozen vials of whisky.

Mr. INNES. That is the one given to him, he says, by McGregor.

The CHAIRMAN. That is the one given to him by whom?

Mr. INNES. By McGregor. He worked for McGregor, he said, to borrow two dollars or two and a half.

The CHAIRMAN. He said there were about two good drinks in them; they were of a brown nature—I suppose because he did not

know the specific nature of the drink—and there were half a dozen of those used. Now, were there any more vials of whisky handed out, so far as this record is concerned, than those six vials? That is 12 drinks of whisky; there were six vials, and two drinks in each vial.

MR. INNES. Yes, Mr. Chairman; there is no evidence that anybody in the entire district, that any candidate, State officer, or governor—they were all running that day—that liquor was handed out to anybody except this.

MR. ROGERS. I notice the witness has his own standard of ethics, because he says on page 342 of the record, "I suppose I would tell you a lie, but not on the stand."

MR. INNES. I did not quote him, because he was simply the type of man I do not think anybody ought to put on the witness stand to take away anybody's reputation.

Coming to the other specific charges, about bribery—that is a pretty strong word to use. Brother Prout mentioned three instances. The Keyes case was one. The second case was Purcell. Purcell sent out that postal card with Reynolds and signed it. Purcell testified that he received certain money which went to the printer, and the printer was called and testified what he received to pay for those cards. Purcell directed a thousand of those cards himself, and Reynolds directed the other thousand, and there was left over, after the campaign, \$4 for directing that thousand cards, for the work he had done, and he kept it.

THE CHAIRMAN. How much did he keep for directing the cards?

MR. INNES. \$4 for the whole work he had done. I think that is petty muckraking, to charge bribery against a man whose testimony is uncontradicted, with a statement of that character.

Then they speak about Mason, the negro, and Sheperd. Mason held rallies in ward 18.

THE CHAIRMAN. How much money did Mason get?

MR. INNES. One got \$58 and the other \$40. Mason got \$58.

THE CHAIRMAN. What did Mason do for that; how many rallies?

MR. INNES. The testimony shows that. I am talking only from the record. The testimony shows that Mason held night rallies.

THE CHAIRMAN. How many, about?

MR. INNES. He had an automobile, and presumably he went around and had various meetings in ward 18 on two nights. That is the only negro vote there is in the district. And that was receipted for, and put on Mr. Tinkham's book, which was produced here, in which he had kept every dollar he spent—not alone that which he returned but every dollar which his return said came under the United States law, and which he appreciated this committee had a right to have, if it wanted.

THE CHAIRMAN. Tell us what he did for the \$58. He had an automobile?

MR. INNES. He had rallies in the nighttime.

THE CHAIRMAN. And he would go in the automobile from one place to the other?

MR. INNES. There may have been two; I do not know whether there was one automobile or two.

THE CHAIRMAN. Hired automobiles?

MR. INNES. Hired automobiles, because he did not have one himself; he was a negro. And they had rallies at street corners, and

had two or three speakers, and they would get up and talk, and then go to some other place. I think they did that on two nights.

The CHAIRMAN. That was done for two nights?

Mr. INNES. For two nights.

The CHAIRMAN. And that \$58 covered both automobiles?

Mr. INNES. It covered everything that was spent. Now, the other charge, Sheperd, \$18 for circulars; that circular is here in the evidence.

Mr. PROUT. Twenty-seven.

Mr. INNES. Exhibit 27?

Mr. PROUT. Oh, no; \$27.

Mr. INNES. It was \$27 for circulars sent out to those negro voters. It was a perfectly legitimate circular, nothing anybody could object to, did not mention Horgan's name; simply asked his Republican voters to come out and vote. That was sent out by him, and paid for, and kept track of.

And the last charge, and the only definite statement throughout that Tinkham gave anybody a dollar, is that given a man named Dolan, the amount of \$1. And I want you to read Dolan's testimony in the record. Dolan, gentlemen, is another one of those political hangers-on. Dolan had no business. Dolan was in Senator Horgan's office time and time again during the entire campaign, so he says in the record.

The CHAIRMAN. Tell us about Sheperd, then we will come to the dollar to Dolan.

Mr. INNES. To dollar—Dolan.

The CHAIRMAN. You have explained the money to Mason and you have explained the money to those who sent out these cards—Purcell. How much money was given to Sheperd—\$27?

Mr. INNES. \$27.

The CHAIRMAN. What did he do?

Mr. INNES. Sheperd sent out circulars to ward 18 to the colored voters.

The CHAIRMAN. That is the "One way" circular?

Mr. INNES. No; that is not the "One way" circular.

The CHAIRMAN. How many were there, about?

Mr. INNES. That is in doubt. They always claim they have more voters than they have. Mr. Tinkham said 750 to 800. I think that is a fair statement.

The CHAIRMAN. And he paid for the 2-cent stamps?

Mr. INNES. It may have been a 1-cent stamp; he paid the amount for the stamps.

The CHAIRMAN. And that covered everything—the labor of addressing and all?

Mr. INNES. It covered the labor of addressing and everything else.

The CHAIRMAN. How about the Dolan dollar?

Mr. INNES. Now, the Dolan dollar man, as I say, was a political hanger-on. I do not think he was a social friend of Mr. Horgan's in his office. He came to Mr. Tinkham because he had been told there was a barrel of money down there. This was his testimony. He says Mr. Tinkham gave him a dollar and asked him to vote for him; he took the dollar and promised to vote for him. Then next week he went back again because he wanted another dollar. In

the meantime he had been to Brother Horgan's office, but he never asked him for money. He says so, and Mr. Horgan says so, too. So he came down again and got another dollar. I asked him, "What had you done to get that dollar?" and he said, "I thought I could get somebody else to vote for him." I said, "Did you vote for him?" and he said, "No; he did not vote for him." Then I asked him if he intended to, and he said, "No; he did not intend to." And I said, "And you did not intend to go and vote for him when you got the dollar." He said, "No; but he went about to get the other friend to vote for him."

Now, that is the testimony of Dolan with this court convictions.

Mr. OGLESBY. Mr. Tinkham used bad judgment in buying his vote, didn't he?

Mr. INNES. I want to say to you that Mr. Tinkham denied absolutely he gave him a dollar.

Mr. MAGEE. Denied it?

Mr. INNES. He denied absolutely he gave him a dollar. But I am going to read his testimony to you in just a minute—what Mr. Dolan said:

Q. Are you now under probation from the city court?—A. Idle and disorderly. I think that was the charge.

Q. When was that?—A. December 5, 1913.

Q. Have you any other record than drunks?—A. One.

Q. What is the one?—A. Assault.

Q. When was that?—A. That happened in 1907.

Then I asked him what other record he had besides drunks and assault, and then follows his other records.

Now, the question of conspiracy is preposterous and is not to be believed, and ought not to be offered before any tribunal, and I should hesitate to ask anybody to believe that statement against the statement of Mr. Tinkham which I am now going to read you.

Mr. MAGEE. He testified above there that he did not vote for anybody for Congress, didn't he?

Mr. INNES. That is right. That is one of the statements where they say we admitted we gave him a dollar.

Mr. PROUT. Which I later corrected.

Mr. INNES. You corrected that to-day for the first time. Then comes Mr. Tinkham's testimony. He says:

He [meaning Dolan] may have come to my office. There were hundreds, and I might say thousands, who came to my office during the campaign. In relation to these charges that I gave any money to anyone improperly, I want, however, to make this statement, that for years I have been inclined, if a man came to my office and the case was a worthy one, and he wanted me to give him something—from 10 cents to \$5, which, of course, was the maximum—if the case seemed a worthy one I gave him the money. I also have given money to people on the street. I determined when I started in on this campaign that it was unsafe to do such a thing as that, and I even cut out private charity; and although I had many men come to me and ask me for money I explained to them, although they did not seem to accept the information very pleasantly, that it was absolutely impossible for me to give them any money, whether they lived in the district or not, because it might be misunderstood or used against me. And I must say that there were a number of cases where I would have given the man some money had it not been for the campaign.

The CHAIRMAN. Is that all of the evidence of money used?

Mr. INNES. That is all of the evidence in any way.

The CHAIRMAN. We have the liquor and all of the money?

Mr. INNES. That is all of the direct charge of any money coming from any source except they have charged that Mr. Timilty gave somebody some money.

Mr. TILLMAN. I see that Dolan, on page 307, says that Magoon told him he got \$2 from Tinkham.

Mr. INNES. Magoon was called by him.

Mr. MAGEE. What did he testify?

Mr. INNES. He denied ever receiving any money. In fact, he said he did not see Mr. Tinkham until after the election, as I recall the testimony, and then went in to get a job—to ask a favor. He was one of the Roxbury Crossing crowd around there looking for positions, but he had not happened to see Mr. Tinkham.

The CHAIRMAN. I do not want to direct the course of argument; but how about the law regarding campaign expenditures in Massachusetts?

Mr. INNES. I was coming to that last, because that is one—

The CHAIRMAN. That is one of the points relied upon—the conspiracy with Timilty is relied upon; the use of liquor and money—and we want to get your answer on all of these points.

Mr. INNES. I think I have said all I want to say about that particular matter. I do want to call your attention to his brief, in which he cites, on pages 14 and 29, a lot of witnesses whom he says will bear out his contention either that money was used or that liquor was dispensed. And I want to say to you, gentlemen, that the testimony in the record does not disclose that these witnesses ever testified.

Mr. OGLESBY. You can depend upon it we will look up those references.

Mr. INNES. I want to show you a sample of the men spoken of here to-day as testifying to these most serious charges. William J. Kelley was spoken of as verifying the expenditure of money, the expenditure of money in barrooms. And this is a sample of what we have had to meet in this whole hearing, Mr. Chairman:

Q. Did you hear anything about Mr. Logue spending any of Mr. Tinkham's money in the form of cash or liquid refreshment?—A. I heard liquids were passed out freely at Cullivan's barroom. I heard it before and after the primaries, and it was pretty well known in the district that you could go down there, and if you were friendly with their political ideas, you could get fixed up in the way of liquor.

Q. Are you acquainted with a young man named Joe Aigen?—A. I know Mr. Aigen.

Q. Is he employed in Cullivan's barroom?—A. As far as I know, he is tending bar there.

Q. Did you hear that he was active in Tinkham's campaign?—A. I heard so.

Q. And he was dispensing Tinkham's money?—A. I heard so.

Q. And that he was giving out free liquor to people who were supposed to be with Tinkham?—A. That was the general impression.

Q. Now, are you acquainted with a William J. Miller?—A. Why, yes; I know Mr. Miller.

Q. And where was he employed at about the time of election?—A. At Madden's barroom at Roxbury Crossing.

Q. And that goes under the name of Yaeger's?—A. It has gone under the name of Yaeger's.

Q. What capacity was he employed in there?—A. Waiter.

Q. Did you hear that Mr. Miller was interested in Mr. Tinkham's campaign?—A. I heard that.

Q. Tell us what you heard about that.—A. I heard that Mr. Miller was interested in Mr. Tinkham being elected, and that he would set up the drinks in case you spoke well of Mr. Tinkham.

Q. That is, he was working generally in Mr. Tinkham's behalf?—A. Yes; as I understood it.

Then, on cross-examination, I asked:

Q. Did you see Mr. Tinkham give anybody money?—A. Why, no.

Q. Did you see Mr. Timilty give anybody any money?—A. No; I did not.

Q. Did you see Mr. Kelley receive any money?—A. No; I did not.

Q. Did you see Mr. Miller receive any money?—A. No; I did not.

Q. Did you see anybody that you have testified about here receive any money from Mr. Tinkham, or from anybody else connected with the election?—A. No; I did not.

That is Kelley, the same Kelley, who circulated these rumors which have been put out in our newspapers as evidence in this case. Mr. Chairman. We have had some head lines opening up the politics of the day there. Then I go on:

Q. Did Mr. Miller tell you he received any money from Mr. Tinkham?—A. I did not speak to Mr. Miller about it.

Q. Did he tell you that he received any money from Mr. Tinkham?—A. No; he did not.

Then, further along in his testimony:

Q. Is there anybody else that you can mention from the time you started of this campaign that told that they received money from Mr. Tinkham for being with him?—A. I just said before that you wouldn't get anybody to admit it, but the general rumor.

Then comes the barroom story:

Did you ever tell this barroom story?

That is my question.

The CHAIRMAN. That is the story of the Tremont House?

Mr. INNES. No; this is the barroom dispensing liquor for Tinkham:

Q. Did you ever tell him about this barroom story?—A. I don't recall especially about the barroom story.

Q. Well, was that rumor simply something that somebody told you, or was it around the district generally?—A. All around the district. You couldn't help hearing it.

Q. You heard it, and others?—A. Probably hundreds heard it.

Q. I should think you would have gone down with the crowd.

That is the barroom where this was being dispensed, and everybody knew about it. He said:

A. I don't mix with the crowd.

Q. But you heard the story a week before election that free liquor was being dispensed in Garrity's barroom, and that all you had to do was to go down there and get a drink if you were with Tinkham?—A. That was all.

Q. I should think you would have gone down to see the crowd.—A. I tell you I don't drink. I don't go into barrooms.

That is one of the witnesses who verifies the story of liquor, who was active in Mr. Horgan's campaign, one of the managers—not a manager, but a man who did some printing for him. His name is in his return. And then he quotes his own statements, he spent days—a day, I think, and a half—on the witness stand. And this is the kind of testimony:

Have you got any knowledge that former Senator Lane spent money in the district?

Only what I have heard; I have no knowledge.

What did you hear—

And Brother Prout told the witnesses in this hearing, these rumors were competent evidence—that is in the record, too—and they took advantage of that situation and gave these rumors as testimony

to take away the reputation of men who were not there and who could not even testify, if they wanted to.

Q. What did you hear?—A. That he was spending money profusely throughout the district. I saw him at Roxbury Crossing one morning at half past 8 and I thought it was an unseemly hour for him to be at the crossing, and together with that I heard—I assumed that he was spending money.

Mr. Lane denied that he been at the crossing at that time.

Q. And did you hear that he was spending money from more than one source?—A. I don't know what you mean by that.

Q. Was it one individual who told you that Senator Lane was spending money?—A. Oh, no; that was generally said.

Q. Everybody knew that in ward 19?—A. It was generally said around.

Q. And in what way did he spend the money?—A. He was in different bar-rooms buying drinks.

Q. And did you hear of any particular barroom that he was in?—A. I heard that he was in the Highland Tap, and several others. I don't know.

Q. Now, did you hear anything about Senator Tinkham spending any money in the district in different barrooms?—A. Well, no.

Q. Or hotels, or other places?—A. Not before election.

Q. Did you hear anything about Senator Tinkham being in Germania Hall on Sunday afternoon, November 1; that is, the Sunday before election?—A. I heard he was up there; yes.

Q. Did you hear whether or not he spent any money there?—A. Well, I heard he was up there, and that there was a lot of money spent. Whether he, Tinkham, spent it or not, I don't know. I understand he couldn't spend any money.

Q. Did you hear that he was in the Forest Hills Hotel on Sunday afternoon and spending money?—A. Yes.

In all cases we took those rumors, and whenever we found it emanated from any man, we asked if he knew as a fact it was true, or if he had heard the rumor or made the statement. Mr. Tinkham said he had not been in the Forest Hills Hotel during the entire campaign. You have heard that argued, that story about Timilty meeting him at Doyle's barroom or hotel.

The CHAIRMAN. That is the Thursday before election?

Mr. INNES. Some day before election.

The CHAIRMAN. Thursday, wasn't it?

Mr. INNES. It was, I believe.

The CHAIRMAN. You were supposed to meet a man in there and he said you came in on Thursday, before election, and bought a drink.

Mr. INNES. No; he did not say I bought a drink. I went in the toilet, I think it was.

The CHAIRMAN. And told him the bartender would tell him who to vote for. Is that the one?

Mr. INNES. No; that is not the one. It is the one he manufactures to try to bring out some sort of conspiracy, but there is no evidence here that Tinkham and Timilty ever even talked together, or anybody talked to Timilty about Tinkham's campaign, or Timilty ever talked to anybody about supporting Tinkham. There is not a particle of evidence on that subject.

Mr. MAGEE. Was not Senator Timilty running for the senate at this time?

Mr. INNES. That same day.

Mr. MAGEE. Was he elected?

Mr. INNES. He was elected that year and the year after.

Mr. MAGEE. Is he a senator now?

Mr. INNES. He is a senator now, I think serving his sixth term. I would not mention this, but Brother Prout's argument is somewhat personal to me. Brother Prout said there is evidence here of my meeting Senator Timilty in Senator Doyle's barroom or hotel, and that I said—I met him in the hall, I think, and went upstairs with him.

The CHAIRMAN. That is, they met a man who was a waiter?

Mr. INNES. Exactly.

The CHAIRMAN. They had some drinks, and he told them the story?

Mr. INNES. Exactly, Mr. Chairman; you remember it.

Now, what is the evidence they have on that point? Why, from a man named Lally. Who is he? Lally worked in the contestant's office before election.

Mr. TILLMAN. What page?

Mr. INNES. Page 43 of my brief, if I may so refer you. This man Lally worked for Horgan during the campaign. He was one of the most active partisans during the campaign. He was the author of and sent out a circular; he did detective work during the campaign and after. He was produced as the official stenographer to take these notes here, which were to be transmitted to Washington, but we could not agree on his ability to transcribe these notes, or his fairness. He served legal papers for the contestant in this case. He was the man who was always present, and whenever you read this testimony of any of those general rumors, most of these stories which were contradicted by the men themselves were told by Lally. He was omnipresent and ubiquitous and always ready to fill up any chinks. He was the man selected—I do not want to say "selected," but he did go to this hotel. He said he met a man and "put a few drinks into him" to make him talkative, and the fellow said he had seen Mr. Innes in there, Charlie Innes or Mr. Innes, whatever he called me, and Senator Timilty there.

Mr. RAMSEYER. He did not say that himself?

Mr. INNES. He did not say he did at all; he said he had gone there and got this evidence of this man, in this place, who told him those facts.

The CHAIRMAN. And that the bartender would tell him for whom to vote; is that the story?

Mr. INNES. That is the story, Mr. Chairman.

The CHAIRMAN. And the bartender told him to vote for Tinkham? I think that is the story, as I recall it.

Mr. INNES. That is the story. Now, he did not get the name of that man that he says gave him this evidence, and if he did, he did not get his address. He was never produced at the trial. The man who talked to Lally, who talked about the gentleman here, he said he was a spare waiter. His address is 333 Tremont Street. He had not tried to locate him, however, from the time in December when he found this most important evidence, so he thought, of the meeting between Mr. Timilty and myself. I have been known from boyhood days as a friend of Mr. Tinkham's. He is not, as Brother Horgan suggests he is, my rich tool. I have known George Tinkham for a good many years, and was always glad to support him.

Mr. TILLMAN. Is he a wealthy man?

Mr. INNES. His mother and father and aunts are rich. I do not think he is rich, himself. I have met his mother and two aunts, his maiden aunts; they are rich, but he is not a man of large means, himself.

I do not suppose Brother Horgan can understand another man's keen interest in somebody else's campaign. I have taken an interest in Senator Tinkham's campaign for a great many years. I take the same interest now, and have for a good many years. I was not on the committee; my name does not appear in this entire rigid investigation which was conducted. But I did everything I could for him, however. Now, Mr. Tinkham denies having a meeting there with Timilty. Mr. Timilty denies it in a most positive way, before anybody ever knew the charge was to be made. He was called to the stand as one of the first witnesses. He was asked this:

Q. * * * Tell us why on Thursday, October 29, at some time around noon, you were closeted in the toilet room of the New Tremont House with Senator Innes?—A. Where?

Q. Why was it on October 29, Thursday, about noon, at the New Tremont Hotel, Jim Doyle's barroom (that is Senator Doyle), that you met Senator Innes by appointment there, and went to a private room there?—A. Do you really mean that question?

Q. Positively.—A. I never met Mr. Innes any place in my life, in any hotel or any place, and wherever you get that information—

Q. That is all. You deny, then, that you did meet him?—A. Most emphatically.

Q. You never met Senator Innes at the New Tremont House prior to election?—A. Never met him at Jim Doyle's hotel in my life.

Q. Did you meet anybody at Jim Doyle's hotel just prior to election?—A. None, whatsoever.

Q. Were you in Jim Doyle's hotel just before election?—A. Not for a year and a half.

Q. You did not meet Peter Murray in Jim Doyle's hotel prior to November 1?—A. Never met Peter Murray in any hotel.

And so on, about the tricks and the other things, about which we had no idea as to what it was all about, and we sat there in amazement when these questions were asked.

Now, what do you think of any evidence that anybody met Mr. Timilty in Mr. Doyle's hotel. Is that statement a fact? I won't go further to suggest to you the character of Lally, except what this record shows.

The CHAIRMAN. Mr. Innes, what other evidence is there besides Lally's statement that a man told him, to establish this fact? Is there any?

Mr. INNES. None whatever.

The CHAIRMAN. Is it corroborated by any circumstances?

Mr. INNES. No circumstances whatever. And Lally went a little further. This is where he went a little too far, and I am talking from the record. The record discloses he said he met a detective named Erickson, and received instructions to go to Jim Doyle's place out in Roxbury, and told him to see a certain witness and tell him not to talk about this case. This man named Erickson was a detective, and he had been told to find him. And I said to him, How did you happen to know Erickson, and he said they had worked together at one time. Then I asked him if he had tried to find Erickson, and he said, "Yes, I have looked all over town, and can not find him." This testimony was offered to prove that word had been sent to these people to keep away from the hearing. I looked up the records in Bos-

ton, and found a man named Erickson who lived where Lally said he lived, in South Boston, and we brought Erickson down to the court, and Erickson said he had worked on a case with Lally some time before, on some detective business for some corporation, but Mr. Erickson said he had not seen Lally for a year and a half. Then Mr. Lally said he guessed that was not the Erickson he meant.

The CHAIRMAN. I see that in the brief. What is the point you make of that?

Mr. INNES. It is the worst case of manufactured testimony.

The CHAIRMAN. How manufactured?

Mr. INNES. I am not blaming either Mr. Horgan or Mr. Prout for this, because they were surrounded in this case by men who were overzealous, or crooked; I do not know what; and they believed the silly rumors that are brought to your office every time a man runs for office, but you pass them up. I do not blame them. But I say Lally, in that statement, proved absolutely unreliable, and I believe it proves absolute perjury and framing up of testimony in this case.

Mr. OGLESBY. They repeat in there a very serious charge against you, which they say was printed in one of the newspapers in Boston.

Mr. INNES. I did not think the charge was very serious.

Mr. OGLESBY. Page 16.

Mr. INNES. Page 16 of the record, or their brief?

Mr. OGLESBY. Of their brief.

Mr. INNES. Yes. Of course, this statement was written in a Progressive paper of our town, by a very clever newspaper man, who likes to take a fall out of most any party, either party who happens to come his way, and this was written in an interesting and readable way, for the ordinary public. Of course, the information there, Mr. Chairman, was furnished by some close friend of Mr. Horgan's. It gives the amount of money spent for affidavits, and alleges votes were bought at five per. We did not give the information, did we? Who did give it? What is it based upon? The reporter was never called, whoever he was. I asked Mr. Horgan why they never called the reporter to testify to it. It was put out after the election. That is the sort of newspaper stuff we have had in his campaign. Twenty-six affidavits that votes were paid for at \$5 per vote. And then Brother Horgan suggests in his brief that somebody ought to sue those people for libel. I have tried to bring suits for libel, myself, sometimes. You have got to prove it was spoken about some definite person.

The CHAIRMAN. So did Barnes.

Mr. INNES. Nobody wants to walk up to a court and say, "I am the fellow; this charge is about me; it is not true." There is a charge made about nobody here; simply a newspaper story and incidental to that—

The CHAIRMAN. Did you ever find out who gave the information for this story?

Mr. INNES. I assume it must have been some of Mr. Horgan's intimate friends.

The CHAIRMAN. Or a clever newspaper man.

Mr. INNES. I assume it must have been some of Mr. Horgan's intimate friends.

Mr. OGLESBY. You do not have to give the newspaper boys any information for a story.

Mr. INNES. And then I have published the editorial in a paper, the same paper, and I have stated there that it is not part of this record, because it came out after this case was closed. But I put it in, although it is not a part of the record (but I have told you about that) in which this same paper ridiculed all the evidence here as lacking in positiveness and character.

Now, I do want to say a word or two to you about Mr. Horgan's conclusions that he has drawn, that there was a conspiracy or anything crooked back of it. He reasons as perhaps he ought to reason there were Democrats who did not vote for him, and he seems to think that is evidence of crookedness. What are we going to say about William Monroe Trotter, the colored gentleman who was put out of President Wilson's office a few months ago? Horgan says Trotter first informed him of what Timilty was doing; and he claims he received either \$10 or \$20 from Horgan for advertising, or something of that sort. And Mr. William Monroe Trotter is a colored man. Of course, the money did not influence him any. Of course, he has been a leading exponent of his race—at least, the papers state that he represented them here, and the President objected to his presence in his office, and asked him to retire. That is all the record shows, however. It is quoted in the record. Of course, he voted for Mr. Horgan from purely reasons of personal friendship. I do not say he had any other reasons, but I wish Brother Horgan would give us the benefit of that same viewpoint.

I want to say one word about the postal cards, because it has been mentioned these postal cards were sent out, and it is all in the record, by these two men. It was their own idea, the signing of them, and the sending of them to men in the district. They thought of the idea. They were good Democrats and wanted to have Mr. Tinkham elected to Congress. Brother Prout says they had no reason. This record shows one of them was the barber who shaved Tinkham at the Athletic Club. Brother Horgan sneered at it. I do not know what your experience has been, but I have sometimes found a barber most helpful, and I would rather have a barber for me than the average banker, because he will do more for you, maybe because he has more time, and so Travers asked him, and he said he would be glad to do it. He had not any interest in politics particularly.

Mr. RUSSELL. I believe your statement of yesterday was that the contestee indorsed the postal card, and agreed on the form?

Mr. INNES. He did. Purcell brought it to him, he said, and Mr. Tinkham indorsed it, and paid for it. Now, that postal card—there is nothing on it that you can object to, unless you object to the prediction. The prediction was "Vote for Walsh, Democrat, and Tinkham, as hundreds of other Democrats are going to do."

The CHAIRMAN. That was more than a prediction; it was a suggestion, a solicitation.

Mr. INNES. It also says, "as hundreds of other Democrats will do." We think they did. We think a good many Democrats voted the same way, for Gov. Walsh and Tinkham.

Now, I want to speak, Mr. Tillman, because it occurred in your district, on the Slemon's case. In this case it was claimed, and it was a fact, that the candidacy of a well-known Republican was announced who was not a candidate at all. Whether you had the Australian ballot system at that time I do not know. But you did

not have a list of names to vote for and you were handed a ballot, and you would find posted up all over the walls a prominent Republican who was said to be running who was not a candidate at all. Of course, it was an eminently unfair thing to do. I do not know whether it changed the election, but it was unfair as between two honorable men contesting for election; an unfair thing to do; to divert votes from one party by claiming somebody was running who was not running at all. Nothing of that sort was done here.

And you have a case in your records, which came from our own State, where we had a forged telegram as coming from the Democratic chairman of the national committee urging the candidacy of one of two prominent Democrats to Congress, and the chairman of your national Democratic committee, who was said to have sent the telegram which was published throughout the district, said, as a matter of fact, it was a forgery, and the committee found it was a forgery. It was said to be a trick, but they could not say that any votes had been influenced necessarily by it, although they paid some tribute to the ability and standing of the gentleman who had signed the telegram. But you said there was no evidence that any votes had been changed by it. We say that this postal card is a legitimate thing to do; we submit that it is a perfectly fair thing to do. We submit that our methods are legal—of course, we would say that—and we were within our moral rights, and Mr. Tinkham, I think, has a right to say, "I stand for that," and I think it is a perfectly legitimate method of conducting a campaign.

There has been a lot of talk, and Brother Prout has particularly criticized us for the little time we have taken in our brief about the circular called the "One way game expose." There is no doubt about the fact that it was a correct statement of Mr. Hogan's record. There is no claim there is any deceit in the circular offered. I have doubt that even a trained legal mind would know exactly why that "One way" circular came into the brief. It was brought into the brief because he says they want to show Timilty's connection with the circular and, therefore, with Tinkham. I won't discuss all the other phases of it—whether all the signatures are genuine or not—but I want simply to say this, that even if everything he claims about it is true, even if the signatures did come from some of Timilty's clubs, it merely shows some men in Timilty's club were friendly to Tinkham's candidacy. There is not the remotest connection of Timilty with it, except the fact that some members of his club signed it, knowing Mr. Tinkham. And it has been said here in this connection that he has changed his testimony, or we have changed our case, and Brother Prout, in his last brief, has said that we framed up this whole case and changed our policy afterwards. I do not know, but I can not see on what any such suggestion or slanderous remark as that is based. There is nothing changed about the testimony. The facts are clear enough. Senator Nichols drew up that circular; drew it up without asking Tinkham about it. Mr. Tinkham went around in an automobile—around speaking nights and at noon—speaking to the factories at noontime and to the factories at 5 o'clock, and speaking at night in rallies, mostly out on the streets, because he was conducting his own personal campaign—because he was looking for Democratic votes.

Mr. Nichols got that circular up. It was charged to Tinkham at a printing establishment that did all of his work, and he paid for it without any attempt to conceal it. Mr. Nichols wanted some names on that circular, and he wanted, naturally, very properly, if it could be done, Democratic names. He got two himself, all he had to have. He only had to have one by law, but he got two himself. And in the hurry of the time the circular was sent out on Thursday or Friday, I believe, before election. He wanted to send it out in time in order to be refuted if any statements in it were incorrect. In getting those signatures different people started to go to get them, and he says the signatures came in. He only verified two, because he only had to have one. And he added the names of those other people, half a dozen or more, and sent it out. And the evidence all disclosed that he sent it down to the printer and the printer sent it out, acting absolutely in good faith about it, with no attempt made to do anything that was improper. And Mr. Tinkham, when he heard of it, said, "That is all right; that is satisfactory to me, if you know that record is correct." That is the testimony of the record. And he approved it, and said, "I will stand back of everything you said if you know it is correct."

Now, I am going to close—

Mr. RAMSEYER. Who is this man Nichols?

Mr. INNES. Nichols is a State senator.

Mr. RAMSEYER. A Republican?

Mr. INNES. A Republican; yes.

Mr. RAMSEYER. Manager of Mr. Tinkham's campaign?

Mr. INNES. He was not on Mr. Tinkham's campaign committee, but he was a close friend of his, the political editor of the Boston Post—not the editor—but he had been the editor at one time. He is not now. He had done more or less work along these circular-preparing lines.

Mr. ROGERS. This may not be any too pertinent to either side, but it has been discussed somewhat, and I have been rather interested in the suggestion that there were no rules of evidence observed in the proceedings which formed the basis of this record.

Mr. INNES. Absolutely none, Mr. Congressman.

Mr. ROGERS. And that a very large proportion of the evidence there is admissible on no possible theory of law, I take it?

Mr. INNES. I think it is unquestionably true. I want to say I do not believe—and I leave the question to the members of the committee who are lawyers—I do not believe one-quarter of that testimony would be allowed in any court whatever. And the character of what I have given you was the character of testimony that has been offered.

Mr. RAMSEYER. Did you aim to take exceptions to such testimony as you thought illegal?

Mr. INNES. I entered objections, but the magistrate took this view of his jurisdiction, that he was there simply to get what was said and to certify it to you here at Washington, without any attempt to exclude any evidence whatever.

Mr. ROGERS. Do you know in any past contests whether the magistrate has taken that same view or has attempted to limit the evidence?

Mr. INNES. I have only had one other contest, and the magistrate at that time took the same viewpoint, and I think his viewpoint is correct. Personally, I think the entire procedure ought to be revised. I think it is an unfortunate situation.

Mr. ROGERS. That is my experience from a service of three or four years on this committee and I have come to that same conclusion.

Mr. INNES. I do not want to suggest what this committee should do, but I do believe it would be a good thing if you would pass a definite statute putting the matter in the hands of the court to take the evidence for this body.

Mr. TILLMAN. You concede there are no rules governing the admissibility of evidence?

Mr. INNES. Exactly. And the record is full of political linen which was washed out there, which it was thought advisable to wash out.

Now, I want to say a word about the expenditures, whether we have expended more money than the law allowed us. I am coming now directly to what he calls the expenses of an illegal nature.

The CHAIRMAN. That is what I want to ask you, to tell us about the Massachusetts law with relation to congressional requirements.

Mr. INNES. The Massachusetts law has been correctly quoted by Brother Prout, to the effect that it allows \$3,000 expenditures in elections and \$1,500 in the primaries, and then it says:

Provided, however, That candidates for nomination or election to the Senate or House of Representatives of the United States shall be subject to the laws of the United States in so far as this act may conflict with such laws.

The United States statute provides that no candidate for Congress shall pay an amount in excess of that allowed under the laws of the State, provided—

That money expended by any such candidate to meet and discharge any assessment fees or charge made or levied upon candidates by the laws of the State in which he resides, or for his necessary personal expenses incurred for himself alone, for travel and subsistence, stationery and postage, writing or printing (other than in newspapers) and distributing letters, circulars, and posters, and for telegraph and telephone service shall not be regarded as an expenditure within the meaning of this section, and shall not be considered any part of the sum herein fixed as the limit of expense, and need not be shown in the statements required to be filed.

Now, there was a definite provision in the State law which governed, and which I have called to your attention, that the personal expenses should not be considered in determining this question under the State laws. We also have our own State law, saying here that if this act was in conflict with any United States statute that the national law should govern. And that, I think, Mr. Chairman, is a doubtful proposition of law. It was so doubtful that before entering the campaign (this is all in the record, and I am not quoting to you except from the record) the contestee consulted personally various men who would most likely know about what the law tried to do. He consulted the man who framed the act, Maj. John H. Sherburne, of the Massachusetts Legislature, and his testimony is given in the case. Maj. Sherburne advised him that personal expenditures could be made in Massachusetts and need not be returned. He consulted the attorney general, James M. Swift, one of his present attorneys,

and who has been for some time attorney general of the Commonwealth, charged with the duty of enforcing the corrupt-practices act, and he was so advised by him. The deputy secretary of state, to whom the return was made, never claimed that there had been an expenditure beyond the amount allowed by law: he merely claimed that the State law should have been complied with, and that a return of those expenditures should have been made. His one contention was, "You should have complied by making a return."

The CHAIRMAN. His contention was that your personal expenditures were not included in the \$3,000—

Mr. INNES. Exactly.

The CHAIRMAN. But you could not ignore them, and must tell what they were?

Mr. INNES. Exactly; that they should have been returned.

The CHAIRMAN. What do you think about that?

Mr. INNES. I think you are right about it. I think he has a right to make the expenditures, but I think whether he had to return them, now that the question is raised, was a very close one. It was not raised, of course, until after this thing was done; but to cover any possible question, it was all kept by Mr. Tinkham in his book and in his check book, so that every dollar has been shown to this committee.

The CHAIRMAN. Can he make a supplemental report?

Mr. INNES. He can, under our law.

The CHAIRMAN. And did he do that?

Mr. INNES. He was asked to by Mr. Boynton, assistant secretary of state, who is not a lawyer. He says Mr. Tinkham did not do it. And the State had a Mr. Boynton, a Democrat, attorney general at that time, and he took the same viewpoint as Mr. Swift.

Mr. PROUT. That is not so.

Mr. INNES. To be absolutely exact, Mr. Boynton has never made any further request or proceeded in any way. That is in the record—he has never made any further request. And that is equally true of the last attorney general, Mr. Atwill.

The CHAIRMAN. Is it the duty of the attorney general to make request for this supplemental report, or must any candidate make it of his own direction? Do you see the point?

Mr. INNES. I see. It is the custom there, or the law provides, that the secretary of state, which means the deputy, shall call attention to the incorrectness of any return, which may then be remedied.

The CHAIRMAN. Was that done?

Mr. INNES. That was done in a number of other cases. Then Mr. Tinkham says, "I do not think I am supposed to make a return, because my statement sets out"—

The CHAIRMAN. Pardon me, before we get to that. He called attention to what was deficient in the return, in that he had not specified—

Mr. INNES. Specified the amounts.

The CHAIRMAN (continuing). Of those personal expenses?

Mr. INNES. Of his personal expenses.

The CHAIRMAN. What did Tinkham do after that?

Mr. INNES. Mr. Tinkham said, "In the statement I have given you, the return discloses the reasons for not filing them."

The CHAIRMAN. "So that I think I will stand on that?"

Mr. INNES. "And I think I will stand on that." That, then, was referred to the attorney general for such proceeding as he saw fit to take.

The CHAIRMAN. Did he take any?

Mr. INNES. What was usually done, which was to send—because many people slipped up on this—to send it back to have it corrected. Nothing has been done from that time to this.

The CHAIRMAN. Your contention is the fact that the attorney general took no action, as he usually would if there had been anything wrong—

Mr. INNES. Exactly.

The CHAIRMAN (continuing). Is a presumption or a proof positive that the thing must be all right?

Mr. INNES. That is all the record disclosed, what you say, and I am arguing from the record.

Mr. ROGERS. Is this a penal statute?

Mr. INNES. It is a penal statute.

Mr. ROGERS. And any violation of it then is punishable by fine and imprisonment?

Mr. INNES. By fine and imprisonment. But we have good faith—

The CHAIRMAN. Tell us about the good faith.

Mr. INNES. Yes. The good faith is shown first by the care with which Mr. Tinkham went at this, to see what he could and could not do; and, secondly, he kept the books, a most punctilious account in his books.

Mr. RAMSEYER. Is that set out in the record?

Mr. INNES. That is set out in the record.

Mr. RAMSEYER. Every cent, personal, and everything?

Mr. INNES. Everything is set out in the record, and that he asked the opinion of the attorney general and Mr. Boynton.

The CHAIRMAN. I can see that, all right, but is it your construction of the statute that even if a man has filed a defective return and does not cure it, nevertheless the return is all right, provided he acted in good faith?

Mr. INNES. Exactly.

The CHAIRMAN. Show us the statute or tell us about that.

Mr. INNES. The statute provides—

The CHAIRMAN. Without expressing any opinion of the thing at all, suppose the committee should come to the conclusion that this return made by Mr. Tinkham was not correct, and that he should have filed a supplemental return, and, to that extent, it is deficient: If we get that far, is it your contention that he is absolved from it by the fact that he showed good faith?

Mr. INNES. Absolutely.

The CHAIRMAN. Show us that.

Mr. INNES. I also say even if you find his return should have been filed, irrespective of the suggestion or of the express statement about good faith, that it would have been entirely within the province of this committee, if they thought there was good faith, to allow him to retain his seat.

The CHAIRMAN. Of course, I understand that, but you go stronger than that, your Massachusetts law.

Mr. INNES. Of course, our court has recently held the entire corrupt-practices act is unconstitutional.

The CHAIRMAN. Yes; I understand they have held it is not within the province of a State legislature to bind national or congressional candidates.

Mr. INNES. Exactly.

Mr. RAMSEYER. Have you the decision?

Mr. INNES. I have been too busy——

Mr. RUSSELL. Is that the supreme court of your State?

Mr. INNES. The supreme court of our State. They have practically said you can be the judge of your own returns and the legislature can not pass any law binding any successor.

Mr. PROUT. Is that the Swig case?

Mr. INNES. Yes.

Mr. PROUT. That has nothing to do with the congressional elections.

Mr. ROGERS. I do not think that Swig case has any bearing upon the question before us.

Mr. INNES. I did not cite it, because I wanted to have this case decided upon its merits, but that case did hold that the court had no right to investigate into the matter, or make any report, which was a legislative function, and went further to say it was the function of each legislature to pass upon themselves. I was about to quote the statute, which is chapter 783 of the act of 1914 of our laws.

The CHAIRMAN. What page?

Mr. INNES. It is chapter 783 of the act of 1914, section 10.

The CHAIRMAN. Have you got it in your brief?

Mr. INNES. Yes; it is in my brief.

The CHAIRMAN. On what page?

Mr. INNES. On page 86 of the brief. It says that it shall be a defense to any of these objections that such violation was not committed by the candidate, or any person of his knowledge and in his behalf, and was committed contrary to his orders and without the sanction or connivance of the candidate.

Mr. RAMSEYER. Is that statute law, or a court decision?

Mr. INNES. That is statute law; that is this statute. The second ground of defense is that the participation, if any, of the candidate in such violation, arose from inadvertence, or from accidental miscalculation, or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith. There are other provisions, six or seven in number, which take the violation out of the punishing clause, either by way of removal or by way of criminal prosecution.

Now, I think we have shown throughout this, very conclusively, that we have complied with the law as we see it. I want also to suggest to this committee that this has been a fairly searching examination for this contestee. He was summoned to the witness stand and he was asked to produce every check book and every memorandum book and every bank book having any relation to his bank accounts or personal expenditures. He was submitted, as I say, to a full examination as to all of those matters. Nothing was disclosed of any sort, nature, or description which would indicate there had been a dollar spent that was not down on that book of his, which he kept. I do not think that will be denied.

Somebody asked here what money was spent. There was not a dollar spent except the \$1,200 which is here mentioned and which is before you gentlemen. The secretary of state, Mr. Boynton, whom we have discussed here, said in the course of his examination that the corrupt practices act had not been interpreted yet and, as he said, it is very obscure in many of its details, last year being the first year, and it is a difficult problem to carry it out. So we did the best we could.

The CHAIRMAN. When was this law passed?

Mr. INNES. The very year this election took place.

The CHAIRMAN. In 1914?

Mr. INNES. In 1914; yes.

The CHAIRMAN. The legislature closed when?

Mr. INNES. It closed probably in July, and our Blue Book is not printed, as a matter of fact, until September. Anybody who wanted to look at it, had to go up to the statehouse. The legislature closed that year, I think, in July some time. We sat for some time that year. And that act took effect on August 1. Now, Mr. Chairman, I do not care about pressing this particular thing I am going to speak about, because I do not think it is of any great importance, and I do not want to take your time; but I am only mentioning it to show how possible it is to violate, and intentionally, that statute. We never thought to investigate Mr. Horgan's bills. We never had any detectives, as he apparently had, following him around for days before the election. We did not inquire except as to what appeared in the record. But, in the course of this investigation, it came out that his campaign manager had received contributions and made no return whatever of them. The check was cashed, and there was no dispute about it, and it came out that there had been expenditures for liquor directly contrary to our statute. And his return to the statehouse of that was under "Political headquarters, \$350." When we asked about the bill we found that some of it was for dinners. They had political dinners, political ward committees, and they had a bottle of beer and something else apiece. I do not want to go into any muckraking; I am just mentioning those things.

Mr. RAMSEYER. What point do you make of that?

Mr. INNES. That it was directly contrary to law.

Mr. RAMSEYER. That would not help Tinkham out any.

Mr. INNES. Not a bit, Mr. Congressman. I am only suggesting to you the old maxim of equity which I used to teach, once, and that is, "He who comes into equity should do so with clean hands"; and I think a man who comes in criticizing a most punctilious and careful man, as Tinkham has shown himself to be in this contest, ought not to come here with violations of law of that kind; that is all.

Mr. RAMSEYER. What I was trying to suggest was, if we should find that Tinkham had violated the corrupt-practices act, and also find that Mr. Horgan had violated that act, that would not help Tinkham any.

Mr. INNES. Not at all. But I am also offering, further, to show you it was unintentional.

Mr. OGLESBY. You think that ought to stop us from seating Mr. Horgan if we put Tinkham out?

Mr. INNES. I think so. But, also, I think it has bearing upon the question of how it is possible, unintentionally, to violate this law. Let us assume his campaign manager did it. I do not say he did—

Mr. MAGEE. Have you found any authorities on contested-election cases bearing upon the question of returns?

Mr. INNES. I do not think I have found any authority, but what I think you would not know about. I have looked over all the authorities, and they are in the brief, and I have quoted from cases he cites. I do not think most of them are directly in point. I think they can be readily distinguished. I have not discussed them, because I think I have gone into them fully in the brief.

Mr. RAMSEYER. The law governing returns is of very recent years, anyway.

Mr. INNES. Oh, very recent years. But I want to say there is not a suggestion in this case of any fraudulent votes, or fraudulent registration, of people coerced into voting. There is nothing of that sort suggested here or any claim of marking the ballots illegally behind the rail or tampering with the ballots.

I will close by saying only this, that I have put in this list, at the very beginning some figures in that district. They show the district is a close one. It is a very independent district. We do not take our politics with great seriousness there on matters of this character. In the campaign for governor and lieutenant governor, for instance, we gave Gov. Walsh a plurality of 2,000, and the Democratic candidate for lieutenant governor was in a minority of 1,200 votes.

Mr. MAGEE. In the same campaign?

Mr. INNES. The campaign last fall, the last one.

Mr. MAGEE. What do the Democrats claim the normal plurality for either party is in this congressional district?

Mr. INNES. I think the district is a very close district. I think it is a district any man can carry by a thousand votes, or two thousand, and I think this return which I have here proves that.

I only want to say, in closing——

The CHAIRMAN. I want you to take whatever time you think you should; I do not want to cut you off.

Mr. INNES. I know. You have been very patient, more patient than our committees are. I only want to say this, that the whole difficulty in this case has been that Brother Horgan can not understand how he was defeated. What I say, I say without any personal feeling. I am not going to discuss the personality of Brother Horgan, but I simply want to say that since he entered public life, in 1896, he has run for a great many public offices. He has run as an independent against his own party; he bolted his own party for the Republican Party once and refused to vote for William A. Gaston. And he has been continually in the turmoil of politics. He has attacked some of the leaders of the party over and over again as he has in this brief here, which is bristling with charges against many of his own political party. He may be right about it.

Mr. MAGEE. When did he run as an independent Democratic candidate against the party?

Mr. HORGAN. In 1898.

Mr. INNES. For the senate?

Mr. HORGAN. No; for the board of aldermen.

Mr. INNES. He started in 1896. That has been his career. I say it not intending to criticize him; he may be doing perfectly right,

and be doing a public service in what he is doing. But I say he has accumulated animosities throughout his career in politics.

Mr. MAGEE. You say he bolted the Democratic ticket?

Mr. INNES. He bolted the Democratic ticket against William A. Gaston, who was the Democratic nominee for governor, and supported Bates.

Mr. MAGEE. What year was that?

Mr. HORGAN. In 1902.

The CHAIRMAN. You are mentioning those without saying whether he was right or wrong, but merely to show that he has been a man in the thick of the fight and would naturally have enemies?

Mr. INNES. And has enemies. Perhaps we ought to respect him for it, but we must appreciate the fact that such a man would accumulate antagonisms and can not go into a contest as well as some other man. That is all I want to say about Brother Horgan, except to call attention to this fact, that there was not a paper in Boston that gave him any editorial support whatever. That is in the record. There was not a paper. He talks about notices; he says, "If I was not supported, why did they publish this report that Timilty deserted the candidate?" That was good newspaper stuff; the public likes something sensational, whether it is true or untrue, and it was readable. But when we talk about newspaper support we mean editorial support, and there was not a single paper—and there are a number of Democratic papers there—which supported Horgan in this campaign, while Tinkham, as the campaign book here shows, had on his literature an editorial from the Boston American. Everybody knows the Boston American, what people it is supposed to influence, if any influence it has. You know what it is, and it is not for me to discuss here whether it has any influence or not; it has some influence, no doubt. But that editorial was put in a conspicuous place on Mr. Tinkham's campaign book. Mr. Tinkham entered this contest under the best possible auspices.

There were four candidates mentioned. Senator Lane, who has been mentioned here, had run for two years and been defeated. Mr. Cook had also run once and been defeated. And Mr. Nichols, who was mentioned here, had been in the senate. Pretty prominent Republicans, and there was a pretty good field to enter into this race, which, Mr. Horgan says, was lost at the start. They had a meeting—that is all in the record, too—and they left it to the General Curtis Guild to determine who was the most popular man. Gen. Guild had been governor three years, our former ambassador to Russia, picked out Tinkham and said, "I think he is the man who will make the best run." And they all adopted his suggestion that Tinkham was the man to run; without a contest he had their support, and at the same time they were doing everything they could for him; and yet we have the audacious suggestion in this brief that those men were paid to get out. It has not been pressed, except it was in the charges filed originally.

Now, Tinkham had lived for 45 years right in that district. He had gone to Harvard College, across the water. He had been a very democratic man, he had been to the city council in Boston, he had been a member of the board of aldermen in Boston, and he was known

as Boston's alderman intimately for years. He had been in the senate for three years as well. He planned out a campaign, which he told you about in that record at the time. His campaigns were not conducted with the Republican Party at all. He did not have Republicans, such as Senator Lodge and Senator Weeks and any other Republican orators, on the stump, because he said he knew the Republicans would not vote for Senator Horgan against him, and that is what the other witnesses say in the case, and it is true. Senator Horgan could not get the Republican vote against George Tinkham in that contest. That is all testified to by their own witnesses.

His campaign book was distinctly an appeal to labor, which largely makes up the Democratic vote in that district. He did not say he voted for everything they asked him to vote for, because he did not; But he had taken hold of some of the important things they were interested in, which, in my experience, they more appreciate than a man who votes for everything that comes along labeled labor. And his book and his literature demonstrate the theory on which he went into this campaign. His meetings were held with labor men who spoke for him, men who were leaders in the labor organization, and they went in automobiles to these factories at noon; not with two or three Republicans who were apt to irritate the Democratic converts because they would speak of the old campaigns gone by, but with these labor men who were conducting a campaign openly for him. They went out and talked to those men. You have the evidence of a case where he went at one time to a man named Harol, at half past 10 o'clock at night, and he introduced himself—he rang the doorbell. Harol had probably never met a real Congressman before, or a man who might be a real Congressman, and he was glad to know him, and is there anything strange in his taking hold of him? That was the most effective kind of a campaign. That was the campaign he conducted, intelligently and carefully thought out. It resulted in his running ahead in every precinct, in every ward in the city. And there is not much difference in any of the precincts, whether Timilty represents it or somebody else; I have no brief for Timilty here, but Mr. Timilty, the ward boss (as pictured by contestant), disappeared years ago from politics, hasn't he? We see him in the novels occasionally. or on the stage. He has gone from our State. Patronage has gone. The civil-service laws protect the employees, or determine who shall have the places, at least in Massachusetts, and why build up this man of straw to knock him down again? Why attribute all of this to Mr. Horgan's arrival last June in the eleventh congressional district? And, to Mr. Timilty, why attribute it all to him, because this vote shows a falling off even in Horgan's own district, consistent in all precincts, simply showing they did not want to vote for him.

Now, I want to say one thing in closing, and I think I ought to emphasize this. Perhaps I feel more keenly about this case than I should; but I feel that men have been brought into this case, and their names have been given to the public and to the press, without any justification or excuse, upon mere idle rumor. I think Mr. Tinkham has had the proper results of an election honorably won taken from him, in part at least, by this proceeding and by this character of evidence. I do not know whether you gentlemen who are here in Congress

realize the importance of the positions which you hold and what a great honor it is to a man who has never been a Congressman to look forward to having a seat in this Congress. I think as time goes by you accept it, perhaps, as a part of the duties of the day, and you do not realize what an important thing it is to a young man who has, perhaps, on leaving college gone into public life and who has considered questions in an academic way, but who looks forward for a chance to decide the important questions he has merely thought about. It is an important thing and a great honor to be elected to the Congress of the United States. You have to give up other things of value to occupy the seat, and, after all, one of the things that you get, and I sometimes think it is the best thing and the most gratifying, is the hearty congratulations of your friends and the feeling that you have won a fight and won it fairly. Now, I say we have been deprived of that perfectly just honor and proper honor, and we had a right to it.

Mr. OGLESBY. You are oversensitive. I have not seen a newspaper in the last 10 years which had a kind word to say about a Congressman.

Mr. INNES. I think these charges are beyond that. When a man has been as punctilious and as careful as George Tinkham has been throughout his entire life it is very unpleasant, to say the least; and I say it is taking away from him just honors which he has a right to have to have people discussing evidence of this character, that he is passing out vials of whisky to people to get votes and bribing people to vote for him, when there is not a particle of direct evidence to substantiate it. That brings me to my conclusion, and that is, Mr. Chairman, I think we have a right to suggest that we ought to have in this case a fairly speedy decision. I think we have a right to have something more than a decision in our favor; I think this committee ought to characterize in no uncertain language the efforts of this contestant and the character of the testimony that has been offered here. There is no other place that contestee can go for vindication, that I know of.

Mr. OGLESBY. That would only be done in case he is seated. We never speak harshly about a man who is defeated.

Mr. INNES. I do not want you to speak harshly about anybody; but I do feel that your predecessors at times have adopted very strong language, and have condemned in a most positive way cases they thought were brought with a desire to injure political opponents or air political differences. I think you ought to speak strongly about this case; and I feel if you do not you are going to make it doubtful whether men with a desire to retain their reputations in the community, men with sensibilities, will want to stand as candidates for Congress hereafter.

(Thereupon, at 1.35 o'clock p. m., a recess was taken until 2.15 o'clock p. m.)

AFTERNOON SESSION.

The committee met, pursuant to the taking of the recess, at 2.15 o'clock p. m.

The CHAIRMAN. You may proceed, Mr. Prout.

**STATEMENT OF MR. WILLIAM C. PROUT, ATTORNEY FOR THE
CONTESTANT—Resumed.**

MR. PROUT. Mr. Chairman and gentlemen, this has dragged on a little longer than we thought it would, but I will wind it up now as quickly as I can, inasmuch as Mr. Innes is anxious to get away on the 3.04 train and I do not want to talk indefinitely.

There are several things which were mentioned by Mr. Innes to which I should like to call the attention of the committee. One was the alleged untruthful statement of the contestant's reply brief concerning certain statements by a witness for contestant, one Mr. Duffin. So far as that is concerned, on the face of it, it may look as if it was not justified by the facts, but when that was written I had this in mind: In the first place, at the time I originally examined Mr. Duffin I had no knowledge of this evidence of McLaughlin which was to follow, so that I did not have it in mind that there was to be any contradiction of this kind, since I was only furnished with the information of the evidence as it came up from day to day.

THE CHAIRMAN. You did not call Duffin for the purpose of contradicting the other man?

MR. PROUT. No, sir; I inquired of Duffin, and he said that he did not know anything. At that time I did not know that there was any other specific evidence. Later, it appeared that McLaughlin testified as to a conversation he had with Duffin, and what I had in mind when I wrote that statement in the reply brief was that at no time when McLaughlin made these specific charges did Duffin deny them, as he might have done when the contestee had his time to call witnesses. I mention that not because it is of any great importance but because it might be thought that that misquotation here, or misinterpretation, was deliberate. And on that point I would call the attention of the committee not to attack his fairness but from the fact that the contestee in his brief did the same thing. For instance, on page 8 he made a quotation of a table of votes in which he omitted the vote of ward 18, and he also quoted the vote on page 9 of the record—he made two tabulations of votes, omitting the poll of ward 18. Also, so far as his objection to the introduction of the letter from ex-Congressman Peters is concerned, I say these votes on pages 8, 9, and 10 are votes which are not in the record but which took place a year after the record closed. Also, as to the editorial in his brief, it was not contained in the record but was printed in some paper long after. So there is no serious objection, gentlemen, to our putting that in. It was not done in any underhanded way.

THE CHAIRMAN. Is it agreed by both parties that that letter was really written by Mr. Peters—the one in October, 1915—and that that editorial appeared? Is it a fact?

MR. INNES. If Mr. Prout says so, I would take his word for it; surely.

THE CHAIRMAN. There is no doubt about it?

MR. PROUT. No, sir.

THE CHAIRMAN. There is no doubt about the editorial?

MR. PROUT. I did not see it, but I take it for granted that it was in.

As to the importance of the Peters indorsements and letters which passed back and forth, it is not very great, except so far as it would

go to show good faith, or lack of good faith, on the part of the contestee or persons interested in his campaign.

So far as the position of Mr. Peters is concerned, it is in evidence that the contestant did talk with Mr. Peters here in Washington, and that Mr. Peters did assure him of his support and told him he would be glad to do anything to help him, once, in March, 1914, and also in September, 1914, immediately after the primaries; and Mr. Peters assured the contestant of his support and of his willingness to do anything he could to be of assistance to him.

So far as the indorsement is concerned, it is in evidence that the contestant's campaign was managed by a gentleman named John F. McDonald, who has managed the campaign of the first victorious governor of Massachusetts that they had in Massachusetts for many years, and has managed the victorious campaigns of several governors, and the campaigns of the last two—

The CHAIRMAN. What did he manage this time?

Mr. PROUT. For mayor of Boston; at this time he managed the campaign of the contestant; and he also comes from the ward of Congressman Peters, and was the man who started Congressman Peters in political life by placing him on the first ward committee, and has been with him and been of great assistance to him in all of his campaigns. He was very much interested in the campaign of contestant, and, knowing Congressman Peters's position in the matter, having been in communication with him, he possibly felt justified in giving out some word he had from Congressman Peters: and it is not in evidence, but he was probably responsible for the placing of that indorsement on the circular. Now, it is not at all reprehensible, and there is no evidence that Congressman Peters was not with the contestant at any time. He was with him and was willing to do anything for him, and did actually speak for him two or three nights prior to the election.

So far as the absence of any letters is concerned, there was testimony from three witnesses that letters and telegrams did pass to and fro. The contents of some of the letters was given, and from these letters of Congressman Peters it is clear that he was in communication with contestant and did speak for him.

The CHAIRMAN. Of course, while that was in a way unwarranted, the weight that I think it was meant to have by Mr. Innes was that the name of Mr. Peters was wrongfully used to obtain votes for the contestant. Is that the idea?

Mr. INNES. That was the idea I used in connection with that, and also the reiteration of it in the supplementary brief, and the failure to produce any letter on the subject whatever.

The CHAIRMAN. I see.

Mr. PROUT. On that point, I simply quote pages 361 and 389 of the record, and also page 303, to the effect that Mr. Peters had sent a letter stating that Mrs. Peters was sick and had the baby, and that it was impossible for them to come to contestant. There were a great many letters passed back and forth. Also on page 409—but that is of no great importance—and also on pages 539 and 540.

My remarks may appear disjointed as I go along, but I am simply taking up the points made by Mr. Innes in his argument.

So far as the statement that John J. Sullivan destroyed some 5,000 to 7,000 circulars of contestant, and the contention that that is not indicative of Timilty's position in any way, because Sullivan was elected clerk of the Democratic city committee, that is not significant because he is not the clerk of the Democratic city committee, but he is the clerk to the president of the Democratic city committee, appointed by him, and is his personal choice; and so far as Sullivan not being called is concerned, there is evidence that contestant accused Sullivan of not sending out those circulars, and that Sullivan said he did send them out, and the contestee could, of course, have summoned him and put him on the stand; but the contestant produced the man who handled the folders, and he testified that the last 5,000 to 7,000 were never folded.

Mr. RAMSEYER. Was Sullivan paid by anybody?

Mr. PROUT. He was paid as clerk of the president of the Democratic city committee.

Mr. RAMSEYER. Did Timilty pay him out of his own pocket?

Mr. PROUT. He was probably paid out of the funds of the Democratic city committee, and also paid to send out these particular circulars.

I understand that, so far as the elimination of Timilty as the head of the Democratic city committee is concerned, it is of no great importance. It is simply true that he has been eliminated, and it was to a large extent due to the fact that the Democrats in Boston realized that with such a man at the head of the city committee they could not hope for any success, and it was after one or two failures with him at the head of the city committee that the Democrats ousted him. It is also true that he did want to be elected, and that he was ousted summarily.

Mr. RAMSEYER. Is that in the record?

Mr. PROUT. That is not in the record. So far as factions among the Democrats are concerned, there is nothing in the record, and, as a matter of fact, there is no division, as suggested by the attorney for the contestee, which would line up Mr. Timilty with Mr. Fay or Mr. Watson, the other candidates, on one side, and Mr. Horgan on the other. As a matter of fact, there was no faction in this congressional fight, and while there are factions in Boston, of course, there is no well-defined faction in this congressional district, in the wards that make it up.

The CHAIRMAN. Is there a Horgan faction or a Timilty faction?

Mr. PROUT. There is no Timilty faction outside of Timilty's own ward and neighboring precincts, and the adjoining ward, the other wards that go to make up the senatorial district.

On the point of liquor being used there is one piece of testimony on that, and it was admitted by Daniel Lane, one of the candidates for the Republican nomination, that he did spend money in bar rooms during the campaign, and in the interest of the contestee. He testified that he never was reimbursed any money, but that does not affect the fact.

There is also testimony that Tinkham was in German halls on the Saturday afternoon prior to election, and that money was spent there for liquor, as well as the testimony of the other witnesses that I have already referred to and the testimony of Craven on his own admission.

There is also the interesting fact that one of the barrooms spoken of as dispensing liquor was owned by Garrity. Garrity testified as a witness and endeavored for a long time to conceal any connection with the contestee or anybody else. He said that he was not interested in matters political and did not give them any thought, and had not done anything in the preceding campaign, but later on he admitted in his testimony that in response to a telephonic message from the contestee he called at the contestee's office and was in conference with him. There is no definite connection shown there, so far as the "disbursement," or whatever you want to call it, of liquor was concerned, growing out of that conference; but it is a fact that there is testimony that Garrity did dispense liquor, that he was in conference with contestee, and that he endeavored to conceal the connection with the contestee clearly appears in the evidence.

Of course there are some of the witnesses who are not of the high-type type; there is no question about that, and we would not, for a minute presume to argue otherwise. You do not find witnesses of high type who are mixed up in these cases, either in taking money or dispensing liquor or anything else, and you have to give their testimony the weight that you think it is deserving of, both so far as their testimony appears in the record and from the surrounding facts and circumstances.

Now, I come to the point about Mason and the rallies for negroes. There is no evidence that more than one rally was held.

(At this point there was a call of the house, and a recess was taken for 15 minutes in order that the members of the committee might go upon the floor and vote. At the conclusion of the recess the committee resumed its session.)

Mr. PROUT. I was referring to the testimony about Mr. Mason and certain rallies that were held for the negroes. As a matter of fact, there is no testimony about rallies being held on two nights. There is no testimony about a hiring of an automobile or automobiles or any trumpeter of any kind. The only testimony is that of the contestee himself, who said he understood there was a rally held in some hall near Lenox Street, and he thought he was at the rally; but that is all the testimony there was on that.

As far as the circulars for negroes were concerned, the amount was \$27.85, and the testimony as to the number of negroes varies from 400 to 700 voters. Mr. Innes did not know whether 1-cent or 2-cent stamps were used, but there was no attempt to check up and find out how much money was spent and how much money the man kept for himself.

Before I forget it, I want to make a statement which Brother Innes asked me to make, and that is with respect to the purchase of tickets to balls and dances. His view of that is that the purchase of tickets for dances and balls is perfectly legitimate unless the purchase is made from a political organization and for manifestly political purposes. He neglected to touch on that in his argument, and he wanted to have his statement on that put before the committee.

The CHAIRMAN. Will you state again what you say he believes.

Mr. PROUT. He believes that the purchase of tickets for dances and balls is perfectly legitimate unless the purchase is from a political

organization and for manifestly political purposes. On that point I simply want to say that any purchase of tickets which is manifestly for political purposes, as these purchases were—that is, the purchase of a large number of tickets which were not used by the men who made the purchases, and who made the purchases indiscriminately from any organization that came along, as testified to by one Aspacher, does not come within Mr. Innes's rule; and, of course, so far as his rule is concerned our view is that any payment made, whether indirectly or directly, if for political purposes—

The CHAIRMAN. Suppose a number of the boys get together and form the Humpty Dumpty Social Club, and sell a man running for office \$25 worth of tickets; is that a contribution for political purposes or for the cultivation of sociability or society?

Mr. PROUT. Certainly for political purposes; and particularly if the Humpty Dumpty Club never runs any ball, which is quite common.

So far as the testimony of Lally is concerned, that was corroborated by Mr. Tobin, and the other charges against Lally that he served legal papers for contestant. Tobin's evidence on page 311 of the record consists of the fact that he delivered one paper for the attorney of the contestant.

On the question of Erickson, Lally testified as to one Erickson, that he was unable to locate him, and later the contestee produced one Erickson that Lally testified was not the man he referred to.

So far as the giving on money for advertising to Monroe Trotter is concerned, there is no evidence that money was given to Monroe Trotter. An advertisement was put in the newspaper called the Guardian, and the return for that advertisement was made, and there is no evidence that Trotter was a voter or even lived in the district.

On the question as to the interpretation of the State law and Federal law on the excess of expenditures, and the returns for expenditures, I believe the committee has that thoroughly in mind. I would say, however, in passing, in regard to Mr. Innes's statement as to a decision by the Supreme Court of Massachusetts, recently rendered, in a case called the Swig case, that that has no application whatsoever to this particular case, and if Mr. Innes left the statement or the impression that it had, I do not believe that he intended to leave it that way; but I understood that he did. The Swig case was only on the question of the right of one legislature to delegate its power to some other body, whether judicial or otherwise, and that does not interest us in any way.

Mr. ROGERS. It appeared in the record this morning that there was involved in that case a decision on the constitutionality of the corrupt practices act. That was true only in so far as the portion of the decision was concerned which involved that delegation of the power to the three justices of the court?

Mr. PROUT. Yes, sir. Now, on the testimony as to the use of liquor on behalf of the contestant, the only evidence of that is that at a meeting of the committee of the contestant at which a luncheon was served one or more members of the committee had one bottle of beer. There was no other liquor of any kind served, and nobody had over one bottle; and it was not a public meeting; it was not a rally, the voters at large were not admitted to it. It was only a

meeting of the small committee of the contestant which had charge of the contestant, and it therefore comes under the rule of social entertainment and is not a violation of the act.

Mr. MAGEE. Who paid for that?

Mr. PROUT. The contestant, probably. But it was something which was not ordered by him; and if the men who attended the luncheon ordered a bottle of beer to take with their luncheon it was up to the contestant either to refuse to pay for it or to pay for it, and in view of the fact that if he had thought of it he would have decided that it was not a violation of the act, and consequently he paid the bill for the luncheon.

Mr. MAGEE. There were how many present there?

Mr. PROUT. Something in the vicinity of 12; not over 15.

As to the fact that contestant's independence of thought or action affected him unfavorably, that is not so, because if it were so it would have defeated him in the primary, would have defeated him for office between the years 1902 and 1914, and, as a matter of fact, the movement in 1902 was not in favor of a Republican as against a Democrat, but was a popular movement directed against certain evils of the convention system and was led by a man who immediately following that was elected district attorney of Suffolk County against a man who had both the Democratic and the Republican nominations; and if it had any effect with the voters at large it certainly could not have had any evil effect.

Mr. ROGERS. There are eight wards in this congressional district, are there not, in whole or in part?

Mr. PROUT. Yes.

Mr. ROGERS. Had the contestant ever been a candidate for office in any of those eight wards other than his own?

Mr. PROUT. The contestant had never been a candidate for any office in any ward, with the exception of his own ward; and he was born and lived the greater part of his life in ward 11, at the other end of the district, and was a candidate at large in 1899, covering the city of Boston.

Mr. ROGERS. For the office of alderman?

Mr. PROUT. Yes, sir; and as a matter of fact the contestant not only got his full Democratic support, but in his campaign for the senate he got strong support from all parties.

So far as the support of contestee by labor men is concerned and the fact that labor men were on the stump for him, the only labor men who were on the stump for him were two, neither one of whom lived or voted in the district, and they had no following, and their action was simply a personal action and was not the result of any action on the part of any labor union or labor unions; and, of course, we have cited already the widespread indorsements by labor organizations officially, as well as the personal letters from the legislative agents of various unions contained in the record, and their appearance on the stump.

In conclusion, I simply would like to say that apparently in the mind of any reasonable man there should be no question but that Mr. Timility did support the contestee; there should be no question but that that support was unfair and reprehensible in a great many ways, and in the minds of persons conversant with political matters

in general, conversant with all the testimony in this case, the conclusion is almost irresistible, if not quite, that that support must have been based upon some illegal inducement.

Mr. ROGERS. On page 7 of the record there appears a table showing the difference in votes between Gov. Walsh and the contestant, ward by ward, throughout this congressional district. That may be elsewhere in the briefs, though I have not seen it. That shows that in each and every ward of the eight, Mr. Horgan ran behind Gov. Walsh anywhere from 98 votes to 611 votes, with a total of 2,787. Is there any disposition on the part of the contestant to question the accuracy of those figures?

Mr. PROUT. No, sir; we have already put in a table which contains those figures, as well as for all the other offices.

Mr. RUSSELL. And the contestee ran about the same amount ahead of Gov. McCall on the Republican ticket.

Mr. PROUT. A comparison of the vote of the contestee with Gov. McCall will show that Gov. McCall received from 52 per cent of the vote of the contestee up to 99.9 per cent, receiving the 99.9 per cent in the home ward of the contestee and the 52 per cent in ward 18, which is Mr. Timilty's ward, showing that the vote in ward 18 which Mr. Tinkham got, as shown by that percentage, bears out the contention of the contestant that there was some underlying reason for that vote.

Now, I should like to call the attention of the members of the committee to the law already cited, and to the fact that this committee is the judge of the admissibility of the evidence and the weight of evidence, and that it was the duty of the magistrate who sat here to report everything to the committee; and in order to give the committee a picture of everything surrounding the case we thought that everything should go in and consequently everything has gone in, and it is for this committee to say just how much weight each piece of testimony is entitled to, and we would respectfully ask this committee to consider the testimony given by everybody, and all the facts and all the evidence surrounding the case, and to apply to the case the knowledge that you men have in common with men in general as to political practices and customs, and the special knowledge that you have as persons who have gone through political campaigns yourselves, as to the probabilities of the case.

Now, you are not bound by the rules of evidence. You can consider any evidence that you care to consider and give it the weight you think it is entitled to; and in a case of this kind, in applying the knowledge you have of politics in general and the knowledge of law you have, and of the laws of evidence, you must agree that in this particular kind of a case it is impossible to get direct evidence, and you are not only justified in proceeding on circumstantial evidence, but are really forced to it, and in considering that you can consider what is the law in Massachusetts, and I presume it is the law of other States. If a man is walking down the street wearing an overcoat and carrying another a police officer has a right, in Massachusetts, to arrest that man, with no knowledge of where he got the coat, or whose it was or anything about it. He can arrest him and bring him into court and the man can be tried and can be found guilty on no other evidence than his being in possession of a coat stolen from some party unknown. If that be true elsewhere ordinarily as it is in Massachusetts, where a man can be found guilty for

the unexplained possession of property which a police officer thinks was stolen from some person unknown, why can we not apply that in this case and say that Mr. Timility did certain things—was found in possession—

Mr. MAGEE. Suppose the man who had the coat denied he had stolen the coat and testified it was his own?

Mr. PROUT. Under the statute the burden is upon him to explain the possession of the coat.

Mr. MAGEE. Suppose he proved it was his own coat, would he then be convicted?

Mr. PROUT. If he claims that the coat is his own, the judge, from his observation of that man and from what knowledge he may obtain from the police officer of a previous record of that man, can draw his own conclusions, and can, even in the face of an allegation on the part of that man that it was his own coat, find him guilty.

The CHAIRMAN. Your point is that it shifts the burden upon him, and that applying the analogy in this case, it is up to Mr. Tinkham to show that he is lawfully in possession of this seat, after you have cited circumstances which show, in your judgment, that he is not lawfully in possession of it?

Mr. PROUT. Yes, sir. I make two points—

Mr. MAGEE. In my State you have to prove a man guilty beyond any reasonable doubt.

Mr. TILLMAN. It is so everywhere in the world.

Mr. MAGEE. If a man swears that the property is his own—

Mr. RUSSELL. Some fellows swear they did not do a thing, and there are so many other circumstances surrounding it showing that they are lying about it that their testimony is worse than if they had not said a word.

Mr. TILLMAN. The principle of the criminal law is that where one is in possession of property recently stolen, there is no presumption of law that he is guilty, and it is a weak one of fact. The Supreme Court of Arkansas, in construing that very same thing, following the language of the criminal law writers, Story and others, on that proposition, has said that in the first place if a man goes down the street with an overcoat, the presumption would be that it is his overcoat and not somebody else's. If it is known to be a stolen overcoat, then being in possession of property that is stolen, the law writers say it is a weak presumption of fact that he did not come by it honestly. As to the presumption of law, a man is presumed to be innocent until he is proven guilty, and that is not only the presumption of the common law, but under the code in every State.

Mr. PROUT. Of course, the law in Massachusetts is not different from all other laws. It is the same as it is elsewhere. A person arrested for a crime is presumed to be innocent until the contrary is proven. Also, he must be proven guilty beyond a reasonable doubt.

Mr. MAGEE. It requires stronger proof in a criminal case than in a civil action.

Mr. PROUT. Yes; and in that case it would require a stronger presumption than in this case.

Mr. RAMSEYER. In this case what rule do you claim applies, the civil rule? Is not the burden upon the contestant to prove that he is entitled to this seat?

Mr. PROUT. The burden is upon the contestant, of course, to make out his case, and we submit that on the legal authorities cited here on yesterday, with the production of all this testimony, a strong case is established.

Mr. MAGEE. What part of this congressional district—eight wards, I think you said it contained—was included in Senator Timilty's district?

Mr. PROUT. Three wards—18, 19, and 22.

Mr. MAGEE. Is it your contention that the influence of Timilty extended through all these wards?

Mr. PROUT. Through the whole district? No, sir. The voting in the district varies from 52 per cent of Tinkham vote in wards 18, 19, and 22 to over 99 per cent in ward 11, showing a wide disparity in the vote.

Mr. MAGEE. Did either contestant or contestee reside in ward 11?

Mr. PROUT. The contestee resided in ward 11.

Mr. MAGEE. That is where the biggest vote was?

Mr. PROUT. That is where the lowest vote was for the contestee, in comparison with the other votes.

On that question of the stolen overcoat which I cited I would say that you might take some other stolen object. Within two or three days before coming down here I saw in a paper a case where a man was arrested for being in possession of a bag of coal weighing 100 pounds, and was convicted of stealing that bag of coal from some person unknown, and he was convicted without any evidence that it had been stolen and largely on the fact that he had it in his possession, and it looked queer, and he had a criminal record; and from all the facts and circumstances, and also the fact that he could not explain the possession of it, he was convicted. It was a criminal case, and a higher degree of proof is required than in this case, which is not a criminal case.

Mr. MAGEE. Has that statute been passed upon?

Mr. PROUT. I do not know that that statute has ever been passed upon by the supreme court, but it has been on the statute books there for 10 or 11 years, more or less.

Mr. RUSSELL. If the law is as it is in my State, where the defendant was not bound to testify at all, I do not understand how they could have convicted him simply because he had possession of it. They would certainly have to have some testimony.

Mr. RAMSEYER. They would have to prove the corpus delicti; that is, they would have to prove that it was stolen property. Then they would have to prove that he had it; and then, if he did not explain, the presumption would be that he had stolen it.

Mr. RUSSELL. Mr. Prout said that he was convicted merely upon being found in possession.

Mr. PROUT. The mere possession raises the presumption of theft.

The CHAIRMAN. If when a man was walking on the street carrying an overcoat he was arrested and taken into court by a police officer, and all the police officer could say was that when he took the man off the street he had the coat on his arm, and the judge said, "What have you to say?," and he said, "I exercise my right to say nothing"; and the only evidence being that he was arrested on the street carrying a coat, he could be convicted on that, God help us! I think half of us would be convicted. [Laughter.]

Mr. TILLMAN. The law is uniformly the same on larceny, which is the taking and carrying away, stealing and converting of the property of another; and if a man is knowingly in the receipt of stolen property, he is guilty. Still, it must be knowingly.

Mr. PROUT. Well, we will let that go; and I will ask you, gentlemen, to consider this principle alone apart from any law at all. Your good wife goes down to the kitchen and finds the baby wiping her hands on the roller towel, and on the towel and on her hands there is jam. Then she goes to the pantry and she finds that somebody has been in the jam pot.

The CHAIRMAN. There is the corpus delicti.

Mr. PROUT. In that case, although she did not see the jam taken, she finds that it was taken; and from the fact that she finds somebody stole it, and from the evidence of the jam on the baby's hands, she is justified in the presumption that the child did take the jam; and in this case I say we have found Senator Timilty and other witnesses concealing evidence by testifying that it was not so, and I say you are justified in the conclusion that Senator Timilty got the jam.

Mr. RUSSELL. You think your testimony is absolutely conclusive, and ought to be to this committee, that Senator Timilty did, in fact, work for the election of the contestee?

Mr. PROUT. I do not think there is any question about it. In fact, when Brother Innes was asked the question this morning he said he would prefer not to answer it.

Mr. RUSSELL. They did not concede that he did.

Mr. TILLMAN. I believe he did. I think he actually threw the fellow.

Mr. RUSSELL. I am satisfied that he did, but I do not know that the evidence makes it absolutely conclusive that he did.

Mr. PROUT. The only question seems to be, to my mind, whether or not the contestant has sufficiently shown that it was done for a dishonest purpose.

Mr. RUSSELL. Yes; if he did it honestly and in good faith—and he had a right to do that.

Mr. PROUT. And on that point I have cited a great deal of law; and without taking any further time of the committee, I should like to be given permission, and also I will communicate the same to Brother Innes if given permission so that he may do likewise, to submit a short brief on the law.

The CHAIRMAN. That will be all right.

Mr. RUSSELL. Yes.

The CHAIRMAN. Let us have your brief on the law, and you notify Mr. Innes so that he may file one also.

Mr. MAGEE. Is there anything here to show, or is there any claim, that there were any differences or that any trouble ever existed between Senator Horgan and Senator Timilty prior to this election?

Mr. PROUT. The testimony of Timilty was that they were both friendly.

Mr. TILLMAN. I thought there was evidence of an attempt on the part of Timilty to get Horgan out of the way, so that he, Timilty, might run for Congress.

Mr. PROUT. Yes, that is one of the very interesting extracts from a Boston journal. That is the only thing I have ever seen or heard of it; because Senator Timilty probably realizes as well as anybody

else that he is not congressional timber; and while on that I should like to say that there is absolutely no evidence that the contestant was responsible for any of those articles in the paper or any of the things contained in it; and, as a matter of fact, other articles were contained in other papers which were very strongly opposed to him, the Boston Record, for instance, which published the articles about Senator Tinkham, the contestee being present at the Timilty Club, and other things in other papers which could not possibly be attributed to the contestant, and there is no evidence whatsoever that he is responsible for any of those things in any of the papers.

Mr. RUSSELL. Did Senator Timilty support the contestant for the nomination at the primary?

Mr. PROUT. Senator Timilty kept his hands out of that altogether, because there was a candidate from his own ward who was running and another candidate running. There were three candidates—Mr. Fay, who lived in ward 18; Mr. Watson, who had lived in ward 18 up to that time, but had recently moved to ward 21, the adjoining ward; and the contestant. Mr. Timilty expressed no preference or choice in the primary.

Mr. RUSSELL. Was the contest decisive in that case or was it a closely contested election?

Mr. PROUT. As proved by the evidence cited by the attorney for the contestee this morning the vote was fairly well divided. The contestant won by a plurality of about 800.

Mr. RUSSELL. I believe you stated in your testimony on the matter that the other candidates for Congress in the primary both supported the contestant in the general election?

Mr. PROUT. Yes, sir; went on the stump for him at three or four rallies a night.

Mr. RUSSELL. Was there any question about treachery on their part?

Mr. PROUT. None.

Mr. RUSSELL. You think they were entirely loyal?

Mr. PROUT. Yes, sir; absolutely.

Mr. RUSSELL. And tried to get the support of their friends for the nominee?

Mr. PROUT. Yes, sir.

Mr. ROGERS. Were the names of Fay and Watson signed to that circular which is in evidence—that big, green circular?

Mr. PROUT. That I could not say. They probably were.

Mr. ROGERS. Is there any evidence in the record as to whether Senator Timilty authorized the use of his name?

Mr. PROUT. The only evidence on that point is that of one of the witnesses who was asked that, and he testified that those names were all procured by persons sent out here and there to get them, and that he procured some himself; but he did not say which particular ones.

Now, that is all I have to say, and if I have the permission of the committee I will notify Mr. Innes that he may submit a brief on the law, and I will do likewise, and I will submit a copy of my brief to him also at the same time I send it to the committee.

The CHAIRMAN. Mr. Horgan, you have been here all day, and if you would like to make a statement I think the committee would be willing to hear you.

STATEMENT OF MR. FRANCIS J. HORGAN, THE CONTESTANT.

Mr. HORGAN. Mr. Chairman and gentlemen, I do not know that it is necessary, and perhaps it is not advisable, and I think perhaps it is unfair in the absence of the attorney for the contestee for me to make any statement to the committee.

The CHAIRMAN. You have been sitting here all day. We are not bound exactly by strict rules, and if you want to make any statement I think the committee would be perfectly glad to hear you.

Mr. HORGAN. What I would say, Mr. Chairman and gentlemen, would be largely reiteration, and I simply would desire to emphasize this point, if I may, waiving the evidence which appears in the record, the value of which I presume you gentlemen are the final arbiters of. The weight of the evidence you are the final arbiters of; the rules of evidence you are the one to determine upon. Upon the question of conspiracy I believe I would like to emphasize the fact that where conspiracy is charged, especially in contested-election cases—assuming for the moment that you are governing yourselves by the action of your predecessors—it is a well established rule, taking into consideration all the circumstances of the case, and recognizing, as men must that know human nature, that it is absolutely impossible to implicate the parties directly in interest or to show the consideration, that it must depend absolutely upon indirect evidence; and the value of that indirect evidence does not merely consist in the statement of John Jones or Thomas Smith or two or three of them, it is the cumulative evidence of all of them combining, to that particular conspiracy. If those men have convinced the minds of you as intelligent, practical men, that Timilty did an overt act which of itself is unexplainable, it is proper for you to go behind and try to ascertain the reason: and to ascertain the reason you must analyze the evidence of the various witnesses: and in determining the value of their evidence you must appreciate, as I believe you do, the fact that these witnesses must give largely circumstantial evidence.

The CHAIRMAN. Let me say this to you. Here is my difficulty, and it may be the difficulty of other gentlemen on the committee: I will say—though this is merely an opinion which is subject to change on reflection and discussion—that so far as I can see, Timilty did go into an alliance with the Republicans against you, and I have no hesitation in saying that it was a most base political act. But, assuming that to be true, did he not have a legal right to do that; whatever we might think of a man of honor—or not of honor, if you would so put it—is there anything in that that he did not have the right to do?

Mr. HORGAN. Mr. Chairman, I would like to make this statement.

The CHAIRMAN. I would like to have you make any statement you want to.

Mr. HORGAN. First of all, I agree with the chairman, that if Mr. Timilty as a citizen himself did a certain thing which may have been reprehensible in itself, so far as he was concerned and so far as I was concerned, that act amounted to nothing so far as any possibility of a conspiracy may have been concerned or any possibility of illegal consideration may have been concerned; but if in

addition to that he was chairman of the Democratic city committee and had been a member of the ward committee for 20 years, and he had on the night before election on the public platform, in introducing me as the Democratic candidate for Congress, denied that there was any truth in the statement of his proposed knifing of me, and had on the night before done all these friendly acts with a man with whom he had been politically and personally friendly, not only must a grave suspicion arise in your minds as intelligent men, but you are justified in considering all this testimony of other witnesses, that there was a conspiracy.

The CHAIRMAN. In other words, this is what you mean, I think: If we come to the conclusion that he, a man of power as he was, gave his support to the Republican candidate, we can, from slight circumstances, come to the conclusion that he did it not only not fairly but unfairly?

Mr. RUSSELL. But dishonestly?

Mr. HORGAN. Well, Mr. Chairman, if there were only slight circumstances I think that would be, from lack of explanation—

The CHAIRMAN (interposing). I am not going to criticize these things.

Mr. HORGAN. Yes; sure.

The CHAIRMAN. I had better say from the circumstances of the case, whether they be light or weighty, your contention is that from those facts we can come reasonably to the conclusion that he did it dishonestly.

Mr. HORGAN. That is my contention, and I hope and believe—

The CHAIRMAN (interposing). I want your view, and if you can give us citations on that, in your brief, or show us some authority, it will be very helpful to us, I think. It will be to me, personally.

Mr. HORGAN. I understand that authority on the matter of conspiracy, if proved, has been afforded by the citations on the matter of conspiracy?

The CHAIRMAN. Yes.

Mr. HORGAN. And I would like just to say this, that I hope and believe, aside from the feeling that as a human being I naturally entertain toward Mr. Timilty, we have been in this case animated by and have endeavored to show only the feelings that naturally surround matters of this character, and to present this case as fairly and as impartially as a case of this kind can be. We have not intentionally assailed Mr. Innes personally, or his integrity. We have not even said—

The CHAIRMAN. All we want is to get the evidence in this case.

Mr. HORGAN. Surely, Mr. Chairman.

The CHAIRMAN. Either you are entitled to that seat or Senator Tinkham is.

Mr. HORGAN. Surely.

The CHAIRMAN. If he is not entitled to it, we will put you in. If he is entitled to it, we will put him in.

Mr. ROGERS. You ought not to say that, Mr. Chairman.

The CHAIRMAN. No; I ought to say that if he is not entitled to it we will vacate the seat, and if after vacating it we find that those votes should have been cast for you, we will put you in.

Mr. HORGAN. I understand, Mr. Chairman, that you may either vacate the seat and declare the election void or place me in there.

The CHAIRMAN. I merely meant to say that the committee would do justice as between you and Congress and as between you and the contestee.

Mr. HORGAN. I am perfectly satisfied of that, Mr. Chairman.

Mr. ROGERS. There is just one observation I would like to submit. I think there should be some definite agreement as to the limit of time for the presentation of these briefs on the law.

Mr. HORGAN. Would you say two weeks?

Mr. ROGERS. Suppose we say May 20?

Mr. HORGAN. Is that within two weeks? That is ample so far as we are concerned.

The CHAIRMAN. Then by May 20 you will have those briefs in?

Mr. HORGAN. Yes. We will notify Mr. Innes to-morrow, so that he can have the same opportunity that we may have.

Mr. RUSSELL. So that the committee might be entirely fair, do you not think it would be probably better now to ask the contestee whether he wants to say anything to the committee?

The CHAIRMAN. Yes; and if we had had him here, I think we would have asked him. I will ask the clerk to see if he can communicate with Mr. Tinkham over the telephone.

Mr. RUSSELL. He may not desire to appear, but I think he should be given the opportunity.

Mr. ROGERS. We had better conclude the hearing to-day.

Mr. TILMAN. Yes; let us get through with the hearing to-day.

Mr. RUSSELL. Is it your idea, Mr. Chairman, now to make a report on this during the present session?

The CHAIRMAN. Oh, yes.

Mr. RUSSELL. I think we ought to do it.

(Informal conversation between the members of the committee followed for about 10 minutes, at the expiration of which time Mr. Tinkham, the contestee, appeared before the committee.)

STATEMENT OF HON. GEORGE HOLDEN TINKHAM, THE CONTESTEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS.

The CHAIRMAN. Mr. Tinkham, we have extended to Senator Horgan the privilege of making a few remarks, or making such observations as he thought he ought to make to this committee, and we did not think it would be fair to let him have that privilege without also extending it to you, and if you want to make any statement to the committee we will be glad to hear you.

Mr. TINKHAM. As I understand it—I was not here—the contestant has made a statement and you wish me to make a statement, if I desire.

The CHAIRMAN. He has made a statement. After Mr. Prout had finished we called upon him and asked him if he had anything to say.

Mr. TINKHAM. That is very fair, Mr. Chairman. I am sure.

The CHAIRMAN. Are there any particular points in your case that you would like to bring to the attention of the committee?

Mr. TINKHAM. The case of the contestee, I think, has been thoroughly explained and amplified by my counsel, who is a very competent man, or has been very fully and completely set out in my brief, in the preparation of which I took part. From what I have heard

was argued before the committee yesterday—I was not present at any of the hearings—I should like to emphasize particularly two facts. The first is, that the eleventh Massachusetts congressional district is not Democratic as has been claimed. I believe the committee, to be convinced of this fact, should examine carefully the votes of that district for various offices for the last seven years. Those votes are carefully set out in the brief and they are the votes which I studied before becoming a candidate, and they are the votes also which determined my mind. I should not have thought of running for Congress without a very careful examination of the situation, particularly a very close inspection of the votes cast during the past few years. I found, as I testified to in the hearing and as you will observe in the brief, that for various offices where the vote was consolidated for the district, the district had been carried time and again for the Republican Party, although not for the head of the ticket.

With my knowledge of the issues and the men in each successive campaign, I realized that the head of the ticket on the Republican side had lost the district because of his weakness and issues or political complications, but that basically the district, although I should not want to say it was Republican, had a tendency to be more Republican than Democratic. When I found that this was the fact, I examined closely into the general political situation. I knew that in a mid-election between two presidential elections there was usually a reaction against the party in power. I knew there were certain local political issues which would be extremely helpful in that particular district for a Republican. I think there appears in my testimony various issues which I thought would be helpful for a Republican. Then I also knew of various antagonisms against the contestant, who I expected would be nominated—wholly political, not personal—and I came to the decision that I could defeat him on the issues as they lay and in that district and at that particular time. I did not announce my candidacy until he had positively announced his. The point I want to make is that the committee shall neither think nor have the impression that, although the eleventh congressional district has been represented by a Democrat in Congress, and always has been for 12 years, it is a Democratic district, because it is not.

The other fact I desire to impress upon the committee is my good faith in my intention to conform both to the United States and Massachusetts corrupt-practices acts. The Massachusetts statute had just been passed by the legislature in 1914 and was somewhat obscure. The Massachusetts statute said that \$3,000 was the limit of expenditures for a congressional election. The United States law allowed an unlimited amount for printing and postage, and by the phraseology of the Massachusetts statute the expenditure for these two purposes, it seemed plainly, was not included in the \$3,000 limitation. The facts and the law have been carefully set out in the brief and in argument. With the understanding that I might be somewhat influenced in my opinion because it was to my interest to have the law interpreted as I interpreted it, I went to a lawyer who had been attorney general of Massachusetts, and who had had a great deal of experience in interpreting statutes and enforcing the election laws. I wanted no difficulties after my election; it was useless for me to

run for Congress, if after I was elected I was to be unseated. I asked his opinion as to whether I could make expenditures for printing and postage outside of the \$3,000 limit of the Massachusetts statute.

He gave me a written opinion and his personal assurance that I could do so. I also interviewed the man who drew the Massachusetts act, Representative Sherburne, of Brookline, Mass., whom I knew very well, and I asked him what his interpretation of his own bill was in relation to the point involved. He told me so far as the printing and postage was concerned, that in a congressional election the \$3,000 limit did not apply, that that was the intention of the act and was his intention when he drew the bill. He stated that the exemption clause in the Massachusetts statute was put in for that very purpose. This is the second fact I desire to emphasize. All this appears in evidence and is confirmed by these two men. I think it shows my complete good faith in expenditures, particularly for printing and postage. It was only yesterday, when I saw Senator Owen about a corrupt-practices act which he has introduced in the Senate, that I drew his attention to the fact that, so far as postage and printing were concerned, if there was a limitation of expenditures put upon them, then he was putting a limitation upon free speech by a representative to his constituents, because there is no way in a large city with its various elements in which a candidate or representative can communicate with his constituents except through the mail. I do not believe it is the intention of any legislature. I do not believe it is the desire of the people that representatives of the people should be prevented from having free speech with their constituents and from communicating with the people, and I should say that on principle any law which interfered with or restricted communication by a representative with his constituents might be held unconstitutional as a restriction upon free communication and free speech.

I think this is all I have to say, unless the committee wants to ask me any question or for any information which will assist them in a complete investigation. If there are any such questions I should be much pleased to answer them.

The CHAIRMAN. No; no question has been raised.

(At 4 o'clock p. m. the committee adjourned subject to the call of the chairman.)

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